Supreme Court of the United States

OCTOBER TERM, 1969

No. 268

CHARLES LEE PARKER,

Petitioner,

—VS.—

NORTH CAROLINA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NORTH CAROLINA

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IN THE COURT OF APPEALS
OF NORTH CAROLINA
SIXTH DISTRICT

CHARLES LEE PARKER

v.

STATE OF NORTH CAROLINA

STIPULATION OF COUNSEL—February 15, 1968

IT IS HEREBY STIPULATED AND AGREED by the counsel for the petitioner and the Solicitor in the above case that the following shall constitute the record and the case on writ of certiorari in the above case.

IT IS FURTHER STIPULATED AND AGREED that this case came on regularly for hearing at the November 13, 1967, Special Civil Session of Superior Court of Halifax County; that the aforesaid Special Civil Session was duly organized and constituted; that the parties were properly before the Court; that the Honorable Joseph W. Parker, Judge Presiding, was duly commissioned to hold the aforesaid Special Civil Session of Court; that the captions to the pleadings need not be included in this record and case on writ of certiorari; and that the record and case on writ of certiorari were duly served on the Solicitor within the time allowed and provided by the Court; and that service of the case on writ of certiorari is accepted.

This 15th day of February, 1968.

/s/ NORMAN B. SMITH
Attorney for Petitioner

/s/ W. H. S. BURGWYN, JR.
Solicitor

IN THE SUPERIOR COURT OF HALIFAX COUNTY

[Title Omitted in Printing]

PETITION TO REVIEW CRIMINAL PROCEEDING PURSUANT TO G. S. 12-217, ET SEQ.

NOW COMES your petitioner, CHARLES LEE PARKER, proceeding in accordance with the provisions of G. S. 15-217, et seq., and respectfully shows unto the Court as follows:

1. Your petitioner is a prisoner at the Odum Prison, Northampton County, North Carolina, being held pursuant to a sentence of life imprisonment imposed by the Honorable Judge H. H. Hubbard, in the Halifax County Superior Court, on August 18, 1964, following a plea of guilty by the petitioner-defendant to the crime of first-degree burglary.

2. Your petitioner is a Negro male. The petitioner was arrested and tried at a time when he was fifteen years old. As evidence of his birth the petitioner attaches hereto a certificate of birth, duly authenticated, and designates the same as Exhibit I. He was arrested at about 8 P.M. on Thursday, July 16, 1964, in Roanoke Rapids, North Carolina, by white officers, members of the Roanoke Rapids Police Department. One of the arresting officers drew his gun on the petitioner and ordered him into a police car. The petitioner was taken by the police to an interrogation room at the City Police Department. White officers of the Roanoke Rapids City Police force interrogated the petitioner for approximately two or three hours after he was brought to the police station. The petitioner was accused by the officers of having burglarized a house and raped a female occupant of the house on Sunday, July 12, 1964. The petitioner refused to admit that he had been connected in any way with the crime of which he was accused. The officers told the petitioner that they would do all they could to help him, if he would confess. The police refused the requests of the petitioner to see his parents and to get

in touch with a lawyer. After the interrogation was over, the petitioner was placed in a small, single cell at the police station, in such a place that he could not communicate with any other person.

2. Your petitioner is informed and believes, and so alleges, that about 3:40 A.M. on Friday, July 17, 1964, officers of the Roanoke Rapids, North Carolina, City Police Department came to the house where the petitioner lived with his mother, Mrs. Viola Parker, and notified her that her son, the petitioner, was in custody at the city police station, this being the first notification that Mrs. Parker received of her son's arrest. Your petitioner is informed and believes, and so alleges, that at the time Mrs. Parker was informed of her son's arrest, one of the policemen told her that it would be no use for her to come to see her son at the police station, because under no circumstances would she be admitted. Allegations contained in the foregoing paragraph are based on the affidavit of Mrs. Viola Parker, which is attached hereto as Exhibit II.

3. The petitioner remained in the single cell in which he had been placed, as hereinbefore alleged, throughout the night of July 16-17, 1964. There was a water spigot in the cell, but during the night no water would come out of it. The next day, the water was turned on again. No food or drink was given to the petitioner while he was at the Roanoke Rapids police station. On Friday, July 17, 1964, at about 1 P.M., the petitioner was returned to the interrogation room, and there he was questioned for about an hour by two white police officers. During this interrogation, the petitioner confessed involuntarily to having committed the crimes with which the policemen accused him. After the confession was obtained, the petitioner was taken to the Halifax County Jail, in Halifax, North Carolina. There the petitioner asked the guard whether his relatives would be permitted to see him. The guard told him that they could come at visiting times. He never saw his relatives come.

4. Your petitioner is informed and believes, and so alleges, that Doris Jean Usserey, the sister of the petitioner, and other close relatives of the petitioner went

to the Halifax County Jail at least twice while the petitioner was being detained there. Your petitioner is informed and believes, and so alleges, that each time before Doris Jean Usserey and the other close relatives of the petitioner left from Roanoke Rapids to go to Halifax, they called the Halifax County Jail and asked if they could be admitted, and each time the jail attendant who answered the telephone told them that it was all right to come and visit, that the visiting hours were not over, and that they would be admitted to see the petitioner, but each time, when they arrived at the jail, and before the termination of the posted visiting hours, the jail attendant refused to admit them to see the petitioner, with the explanation that they were too late and that visiting hours were over. The allegations of the foregoing paragraph are based on the affidavit of Doris Jean Usserey, which is attached hereto and designated as Exhibit III.

5. During the August 1964 Term of the Superior Court of Halifax County, North Carolina, the grand jury of the said county returned as a true bill an indictment of the petitioner for the crime of first-degree burglary. A copy of the said indictment is attached hereto and designated as Exhibit IV. Your petitioner is informed and believes, and so alleges, that Negroes had been systematically excluded from service on the grand juries of Halifax County, including the grand jury which returned the indictment against the petitioner and all the grand juries for the four-year period immediately preceding that time. More particularly, your petitioner is informed and believes, and so alleges, that Negroes comprised about forty-five per cent of the population of Halifax County of persons twenty-one years and older, during the period in question, and that Negroes comprised approximately thirty-nine per cent of the total persons contained on the tax lists of Halifax County, but that of the ninety-eight individuals who served on all of the grand juries which sat in Halifax County from August, 1959, through August, 1964, only six were Negroes, and of the eighteen jurors who sat on the grand jury which indicted the petitioner, only one was a Negro. Further, the petitioner is informed and believes, and so

alleges, that the probability of getting six or fewer Negro jurors out of a total of ninety-eight jurors selected, if a selection method is used which is completely non-discriminatory as to race, in a county with a Negro population comparable to that of Halifax County, is such a small probability that it is considerably less than one in ten million. The allegations of the foregoing paragraph are based on the affidavit of Robert C. Waters and Hugh B. Rogers, Jr., which is attached hereto and designated as Exhibit V, and the affidavit of Hubert M. Blalock, Jr., which is attached hereto and designated as Exhibit VI.

6. Mr. Dwight L. Cranford, of the Halifax County Bar, was appointed by the Court to represent the petitioner at his trial. Mr. Cranford visited the petitioner once for about ten to fifteen minutes on July 17, 1964, that is, on the day the petitioner was taken from the city police station to the county jail. The petitioner did not see his lawyer again until shortly before the trial on August 18, 1964. Shortly before the trial was to commence, Mr. Cranford told the petitioner that the only thing he could do was plead guilty, that that was the only way he could help himself. Mr. Cranford coached the petitioner and suggested the correct answers to give to the Judge's questioning, following the tender of a plea of guilty. The petitioner formed his decision to plead guilty on the basis of advice by counsel. In arriving at this decision, the petitioner did not consider whether he had been validly indicted and whether he had a right to challenge his indictment. Also, he did not consider that he would be able to prevent the involuntary confession which he had made to the police, from being used against him at the trial, and the threatened use of the involuntary confession was a motivating factor in the petitioner's decision to plead guilty.

7. Under the circumstances preceding and during the petitioner's trial and sentence in 1964, as described above, the rights of the petitioner under the Constitution of North Carolina and the Constitution of the United States of America, were violated in one or more of the following particulars:

(a) An involuntary confession of crime was coerced from the petitioner by members of the Roanoke Rapids police force, and the petitioner's plea of guilty was a product of the coerced confession, and therefore the plea of guilty was involuntary, and the imprisonment of the petitioner under a sentence based on such an involuntary plea of guilty, is in violation of the 5th, 6th and 14th Amendments to the Constitution of the United States of America, and Sections 11 and 17 of Article I of the Constitution of North Carolina;

(b) The indictment of the petitioner was invalid in that members of the petitioner's race had been and were systematically excluded from the grand juries of Halifax County, and the imprisonment of the petitioner based on a conviction and sentence on such an indictment, without an intelligent waiver by the petitioner of his right to be indicted by a legally-constituted grand jury, is in violation of the 5th and 14th Amendments to the Constitution of the United States of America, and of Sections 1, 12, and 17 of Article I of the Constitution of North Carolina.

8. The questions raised in this petition have not heretofore been raised or passed upon by any Court of competent jurisdiction. The petitioner has participated in no previous proceedings to secure relief from the conviction.

9. Your petitioner is without funds to pay the costs of this proceeding, and is unable to give a costs bond with sureties for the payment of the costs for the proceeding, and is unable to furnish security for costs by means of a mortgage or lien upon property to secure the costs. Your petitioner is without means of any nature sufficient to procure counsel, and he wishes counsel to be appointed to represent him. Your petitioner has been assisted in the preparation of this petition, in the gathering of evidence, in the preparation of affidavits and other exhibits which accompany the petition, and in the accomplishment of legal research by Norman B. Smith, an attorney at law, of Greensboro, North Carolina, who has assisted the petitioner in these respects without the payment of compensation or the promise of payment of compensation by the petitioner.

WHEREFORE, your petitioner prays the Court as follows: (a) That the petitioner's imprisonment be adjudged illegal and invalid by reason of the matters set out in the petition; (b) that the Court order that the petitioner be discharged from the custody of the respondent; (c) that the petitioner be permitted to proceed to prosecute this proceeding without providing for the payment of costs; (d) that the Court appoint counsel to represent the petitioner in this proceeding; (e) that this verified petition be taken as an affidavit to establish the allegations contained therein; and (f) that the Court grant the petitioner such other and further relief as to the Court may seem just and proper.

Petition drawn by:

NORMAN B. SMITH

(Verified 7/9/67 by Charles Lee Parker.)

EXHIBIT # 1 TO PETITION

CERTIFICATE OF BIRTH
STATE OF NORTH CAROLINA
OFFICE OF REGISTER OF DEEDS

County of Halifax Address: Halifax N. C.
Name: CHARLIE LEE USSERY Sex: Male
Date of Birth: April 28, 1949.
County of Birth: Halifax.

PARENTAGE

Father	Mother
Name:	Maiden name: Edith Viola Ussery
Age at time of this birth	Age at time of this birth:
Race	19 Race: Negro
Place of birth	Place of birth: N. C.

Date Filed: 4-30-49 Reg. Dist. # 42-00
Cert. # ———

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I do hereby certify that the above is a true copy of the essential facts recorded on the birth record on file in this office for the individual named hereon.

Witness my hand and official seal this the 4 day of May, 1967.

F. D. WILSON
Register of Deeds

By: JUANITA A. EDWARDS
Asst. Register of Deeds,
Halifax County, N. C.

[SEAL]

EXHIBIT # 2 TO PETITION

AFFIDAVIT OF VIOLA PARKER

VIOLA PARKER, being first duly sworn, deposes and says:

1. Her name is Viola Parker. She lives at 133 Wilkins Street, Roanoke Rapids, North Carolina. She is the mother of Charles Lee Parker, who was convicted in the Halifax County Superior Court on August 18, 1964, on a charge of burglary and was given a life sentence.

2. At about 3:40 A.M. on Friday, July 17, 1964, officers from the Roanoke Rapids, North Carolina, City Police Department, came to her house and notified her that her son, Charles Lee Parker, was in custody at the city police station. A policeman told her that it would be no use for her to come to see her son at the police station, because under no circumstances would she be admitted. This was the first notification that the affiant received of her son's arrest.

VIOLA PARKER
Affiant

(Sworn to 6/19/67.)

EXHIBIT # 3 TO PETITION

AFFIDAVIT OF DORIS JEAN USSEREY

DORIS JEAN USSEREY, after first being duly sworn, deposes and says:

1. Her name is Doris Jean Usserey. She is the sister of Charles Lee Parker, who was convicted of burglary and given a life sentence on August 18, 1964. She lives in Roanoke Rapids, Halifax County, North Carolina.

2. The affiant learned on or about July 17, 1964, that her brother Charles Lee Parker was being held at the County jail in Halifax, North Carolina, on a charge of burglary. She and other close relatives of Charles Lee

Parker went to the Halifax County jail at least twice while Charles Lee Parker was being detained there. Each time before they left from Roanoke Rapids to go to Halifax, they would call the Halifax County jail and ask if they could be admitted. Each time the jail attendant who answered the telephone would tell them that it was all right to come and visit, that visiting hours were not over, and that they would be admitted to see Charles Lee Parker. Each time, when they arrived at the jail, and before the termination of the posted visiting hours, the jail attendant would refuse to admit them to see Charles Lee Parker, with the explanation that they were too late and that visiting hours were over.

DORIS JEAN USSEREY
Affiant

(Sworn to 6/19/67)

EXHIBIT # 4 TO PETITION

MINUTES OF THE COURT

DAN E. JOSEY, JR.
Foreman Grand Jury

6815

STATE

vs

CHARLES LEE PARKER

Burglary

The foreman and fourteen members in open court return the following as a true bill in this case:

SUPERIOR COURT
AUGUST TERM A.D. 1964

STATE OF NORTH CAROLINA
HALIFAX COUNTY

THE JURORS FOR THE STATE UPON THEIR OATH PRESENT, That Charles Lee Parker, late of the

County of Halifax on the 12th day of July, in the year of our Lord one thousand nine hundred and sixty-four, with force and arms, at and in the county aforesaid, unlawfully, willfully and feloniously and burglariously did break and enter, at and in the hours of eleven forty five o'clock P.M. in the night of the said day, the dwelling house of one Silas M. Rowland, there situate, and then and there actually occupied by Mrs. Silas M. Rowland and others, with the felonious intent, he, the said Charles Lee Parker, to forcibly and violently ravish and carnally know Mrs. Silas M. Rowland, a female occupying and sleeping in said dwelling house, without consent and against her will, against the form of the statute in such case made and provided and against the peace and dignity of the State.

W. H. S. BURGWYN JR.
Solicitor

By NICHOLAS LONG

No. 6815

STATE
vs
CHARLES LEE PARKER

Indictment Various Cases
State, Pros.

Witnesses:

X Mrs. Silas M. Rowland
C. G. Caraway
W. H. Wheeler X
J. R. Daniel
J. Y. Duffee
Donald Pepper

Those marked X sworn by the undersigned Foreman, and examined before the Grand Jury and this bill found A true bill.

DAN E. JOSEY, JR.
Foreman Grand Jury

EXHIBIT # 5 TO PETITION

AFFIDAVIT OF ROBERT C. WATERS AND HUGH B. ROGERS, JR.

ROBERT C. WATERS and HUGH B. ROGERS, JR., after being first duly sworn, depose and say:

1. Robert C. Waters lives at 614-A Hubbard Drive, Chapel Hill, North Carolina. Hugh B. Rogers, Jr. lives at B-7 University Gardens, Chapel Hill, North Carolina. Both of the affiants are students enrolled at the Law School of the University of North Carolina at Chapel Hill, North Carolina.

2. The affiants were requested by Norman B. Smith, an attorney of Greensboro, North Carolina, to examine the grand jury rolls of Halifax County, North Carolina, and make findings as to the number of Negroes who served on grand juries in that county from 1960 through 1964, and as to the methods used in Halifax County for the selection of grand jurors.

3. The affiants went to the courthouse at Halifax, Halifax County, North Carolina, on March 17, 1967, and on April 11, 1967. During their visits to the courthouse they talked to Mr. F. D. Wilson, Registrar of Deeds. Mr. Wilson stated that he acts as clerk to the county commissioners of Halifax County and as an ex officio member of that body. He said that the county commissioners act as jury commissioners for the county. Mr. Wilson stated that he was familiar with the past and present methods for grand jury selection in Halifax County. He said that prior to 1967, the following procedure was used:

> The jury box was filled every two years by the commissioners using names selected from the tax list. These lists, one for each township, are maintained in segregated fashion with white persons listed in the front of each list and Negro persons listed in the rear pages. Each page of each list is stamped "white" or "colored" as the case may be. Another list, consisting almost entirely of the names of Negro persons, was introduced for use by the

jury commissioners by Mr. Branch, the Chairman, with the explanation that would insure that there would be some colored people on the juries. In selecting those who would serve, the commissioners relied on their knowledge of the county's people. They selected only people they knew or who were known to acquaintances of theirs, whom they asked for suggestions. This procedure, they felt, was in effect directed by the statutory requirements for intelligence and moral character on the part of jurors. Each jury box contained about 2,500 names selected in this manner. The grand jurors were chosen from the jury boxes at random. Before the construction of a recent addition to the court house, there were no rest room facilities for female jurors, and thus no women served on juries.

Mr. Wilson told the affiants that in a recent capital case, a Negro lawyer from Warrenton had challenged the jury selection system in Halifax County. Concern over this allegation, and the availability of rest-room facilities for female jurors in the new court house, motivated the commissioners to make a complete re-evaluation of their jury selection procedure. Mr. W. H. Burgwyn, Jr., solicitor for the district which includes Halifax County, suggested that the commissioners write to the Attorney General of North Carolina for legal advice on a better system for jury selection. This was done, and the advice of the Attorney General was received. A new plan was adopted by resolution of the commissioners on February 14, 1967. Mr. Wilson described the new plan as follows:

> Only the list of registered voters of the county, which is not maintained in a segregated fashion, is used as a source for jurors. From this list, every fifth or sixth name is put into the jury box unless one of the commissioners has information as to the person's unfitness to serve. The box now contains about 4,000 names. There are many more colored persons included in the jury box now than there were under the former system.

4. The affiants obtained from the Clerk of Court of Halifax County the names of ninety-eight people who served on all of the grand juries which sat in Halifax County from August 1959 through August 1964. Eighteen members served on each grand jury, with nine new members selected each six months. During this time, the minute book showed that one member was excused after having been seated; thus there were a total of ninety-eight grand jurors.

5. Since there was no designation of race in the minute books, it was necessary for the affiants to cross check these names with some of the lists maintained in segregated fashion. From the office of the Tax Collector of Halifax County, the affiants obtained a segregated list of all county taxpayers. In that office each township has a separate tax list for its residents. This list records white taxpayers in the front and Negro taxpayers in the rear. Each page of the list is rubber-stamped "white" or "colored," as the case may be. On some lists appear check marks which the Tax Supervisor of Halifax County explained were put there as reminders to the jury commissioners that the names which had been checked were of persons who perviously had been selected for jury duty. The information from the tax books had been transcribed to cards in an index card file. The tax supervisor told the affiants that the contents of the index card file were accurate. This file listed each taxpayer's name, township, and race. It was from this file that the affiants made the determination of the race of the persons who served on grand juries during the period in question.

6. From the above described tax records, the affiants found that from August 1959 through August 1964, there were six Negroes among the ninety-eight grand jurors who served. Of the eighteen grand jurors who sat in August, 1964, only one was a Negro.

7. The affiants counted the number of white and Negro taxpayers in Halifax County in the years 1960 and 1964. These figures were obtained from the tax lists in Halifax County Tax Collector's office. The results were as follows:

Year	White	Negro	Other
1960 tax levy	11,512	7,476	- 0 -
1964 tax levy	11,718	7,287	*129

*Indians were listed separately in 1964, but not in 1960.

8. The lists of grand jurors serving in Halifax County from August 1959 through August 1964, along with the designation of their townships and race, are set out in EXHIBIT I which is attached hereto and made a part hereof.

HUGH B. ROGERS, JR.
Affiant

ROBERT C. WATERS
Affiant

(Sworn to 5/16/67)

EXHIBIT "I"

Name	Township	Race
Minute Book #34 1 February 1960		
Cooper, K. M.	Pal.	W
Katkavek, Leo	RR	W
Bounds, Kemper	Wel	W
Killian, George	Little	W
Pulley, Cleveland T.	RR	W
Snipes, Johnny	Little	W
Northington, W. H.	RR	W
Oliver, T. F.	RR	W
Dickens, Hubert R	Enf	W
Bell, L. R.	Scot Neck	W
Wills, Charles L.	Wel	W
Dickens, Rufus		W
Capps, Clarence	RR	W
Murray, Carl F.	RR	W
Glover, Earl	RR	W
Little, J. P.	RR	W
Warren, Percy Jr.	Pal	W
Minute Book #35 Jan. 30, 1961		
Ansley, Dallas	RR	W
Boyd, Milbert	RR	W
Burnett, R. B.	Hal	W
Cheek, Ulrick	Hal	N

Name	Township	Race
Griffin, O. B.	S. Neck	W
Hudson, Ralph J.	S. Neck	W
Inabintt, O. E.	Hal	W
Kilpatrick, Knox	Wel	W
Price, B. R.	Little	N
Bryant, A. L.	RR	W
Crickmore, Albert Gray	Enf	W
Glover, T. B.	Wel	W
Medlin, Charles	Fau	W
Pike, Herbert	Fau	W
Pippin, Marvin Jr.	S. Neck	W
Kennemor, Calvin S.	RR	W
Horwitz, Frank	Enf	W
Forrest, S. A.	RR	W
January 30, 1962 Minute Book #35		
Wall, Edgar J.	RR	W
Rawls, James W.	S. Neck	W
McGee, J. E.	Wel	W
Collier, J. W.	Little	W
Dickens, Lynwood	S. Neck	W
Joyner, Nep	S. Neck	W
Boone, Milton	Wel	N
Bullock, Curtis	RR	W
Willey, John J.	Wel	W
Whitehead, W. J.	Roseneath	W
Travis, W. A. Jr.	Wel	W
Harrison, Henry Lee	S. Neck	W
Stokes, Henry M.	RR	W
Hayes, Kenneth S.	Enf	W
Trotter, J. Fred	RR	W
Pike, Herbert	Fau	W
Joyner, B. O.	S. Neck	W
Parker, Cecil L.	RR	W
Minute Book #36 January 28, 1963		
Browder, H. M.	Wel	W
Smith, Glenwood	S. Neck	W
Wells, William J.	Enf	W
Brown, Sam T.	RR	W
Lawrence, James R.	Enf	W
Smith, Cary J.	Pal	N
Clement, Walter T.	Enf	W

Name	Township	Race
Crawley, Junius	Butter	W
Overton, W. J.	Wel	W
Mouzon, T. H.	RR	W
Braswell, Thomas N.	Butter	W
Neal, J. C.	Con	W
Freeman, Dellie R.	Enf	W
Shields, Lester	Pal	N
Epps, Lloyd	RR	W
White, W. V. Jr.	RR	W
Hux, Lawrence E.	Enf	W
Randolph, Sidney	Enf	W
Minute Book #36 January 27, 1964		
Keeter, Howard	Fau	W
Vick, Harold S.	Enf	W
Powell, J. D.	RR	W
Fleming, Willie L. Jr.	Enf	W
Keeter, William Guy	Fau	W
Buckner, James D.	RR	W
Matthews, Doyle	RR	W
Parrish, J. W.	RR	W
Whitehead, A. J.	Rose	W
DeBerry, Marvin S.	RR	W
Askew, Thurman E.	RR	W
Stedman, Murray R.	Wel	W
Peede, William E.	RR	W
Liles, Murray H.	Fau	W
Freid, Harry	Wel	W
Josey, Dan Jr.	S. Neck	W
Haskins, Wesley Elmo Jr.	Fau	W
Crauford, James A.		W
Minute Book #36 August 17, 1964		
Hackney, Albert	Pal	W
Hardee, Spurgeon E.	Enf	W
Mitchell, Collins	Pal	N
Allsbrook, Tommy R.	S. Neck	W
Miles, Charlie	Wel	W
Crawley, Jim	Brinkleyville	W
Isles, Hubert H.	Butter	W
Lucas, Leon J.	Fau	W
Temple, T. D.	Pal	W

EXHIBIT 6 TO PETITION

AFFIDAVIT OF HUBERT M. BLALOCK, JR.

HUBERT M. BLALOCK, JR., after being first duly sworn, deposes and says:

1. His name is Hubert M. Blalock, Jr., and he is a professor of sociology, at the University of North Carolina at Chapel Hill, Chapel Hill, North Carolina. He received his Ph.D. degree in 1954 from the University of North Carolina, with a major in sociology and a minor in statistics. He is the author of the book, SOCIAL STATISTICS, published by McGraw-Hill in 1960, and two other books on related subjects. He has published about twenty articles on applied statistics in professional journals.

2. The affiant was requested by Robert C. Waters and Hugh B. Rogers, Jr., of Chapel Hill, North Carolina, to calculate various probabilities in connection with jury selection procedures in Halifax County, North Carolina, on the basis of data supplied to him by Robert C. Waters and Hugh B. Rogers, Jr.

3. It is well known to statisticians that ordinary lists, such as telephone directories, automobile registration lists, and tax lists, are biased against lower income persons in general, and Negroes in particular. Furthermore, it is known that, even with perfectly complete lists, the ONLY reliable method of selecting from such a list in order to avoid personal biases is to use some random method of selection. If the list is alphabetical, a close enough approximation to a random sample can be obtained by selecting every kth name from the list (e.g., every 80th or 100th name). No substitutions for idiosyncratic reasons can be permitted.

4. Random sampling, which assures no systematic long-run biases, cannot be equated with "hit or miss" sampling, or any procedure which substitutes personal judgments for chance selection. It has been shown that even the most unbiased individual cannot be counted on to select a "representative" sample, as in the case of the selection of Negro jurors there is every reason to suspect that selection biases will be inevitable.

5. The principles of sampling are based on probability theory, a branch of mathematics. The reasoning is purely deductive, but it has been found to explain results of games of chance to within any desired degree of accuracy. In cases of jury selection, it is a simple matter to calculate the probabilities of obtaining any particular distribution of jurors, either in the case of a specific panel, or for long-run distributions of jurors.

6. To make these calculations, an estimate is needed of the actual proportion of eligible Negroes in Halifax County. The overall percentage of Negroes in Halifax County has remained remarkably stable over the past several decades. According to the U. S. Census, the percentages of Negroes for the census years 1940, 1950, and 1960 were 56.8%, 56.6%, and 55.1%, respectively. In calculating the expected number of Negro jurors it is more appropriate to use the figures for adults who were 21 years and older. In 1960 the percentage of Negroes out of this group was 45.5%, whereas the comparable figure for males only was 46.1%. Lacking evidence to the contrary, it must be assumed that the overall percentage of Negroes did not decrease markedly between 1960 and 1964.

7. A conservative estimate would be that in 1964 Negroes constituted at LEAST 40 per cent of the total population 21 years and older. On the basis of this conservative figure, one can calculate the probability of getting either one or no Negroes out of a total of eighteen jurors if, in fact, the method of jury selection was not discriminatory but was strictly random. This probability can be calculated from the well-known formula for the binominal distribution which is as follows (See William Feller, PROBABILITY THEORY AND ITS APPLICATIONS: John Wiley, 1950):

$$P(r) = \frac{N!}{r!(N-r)!} p^{r} (1-p)^{N-r}$$

where, in this instance $N = 18$, the number of jurors; $r = 1$, the number of Negroes on the jury; and $p = .40$,

the proportion of eligible Negroes in the county. If we set r = 1, this gives the probability of getting exactly one Negro, and we must add to this the probability of getting no Negroes, which is $(.60)^{18}$. Making these calculations shows that the chances are only thirteen in ten thousand, or approximately one in a thousand, that unbiased selection procedures would result in only one or no Negroes. There is therefore no question that this PARTICULAR jury was not selected randomly.

8. To support this argument, there also can be an examination of the racial composition of grand juries during the five year period 1960-1964. During this interval a total of 98 persons served on grand juries in Halifax County, and only six of these were Negroes. Had Negroes been represented in proportion to their adult numbers, we would have expected approximately 40 Negro jurors. Given a sample as large as 98 jurors, the long-run frequency distributions of Negro and white jurors can be shown to approximate very closely a normal probability distribution. One may use formulas and tables as provided in any standard statistics textbook (See H. M. Blalock, SOCIAL STATISTICS: McGraw-Hill, 1960) to compute a quantity referred to as Z as follows:

$$Z = \frac{\frac{6}{98} - P}{\sqrt{\frac{(P\,1\,1\,-P)}{N}}} = \frac{6/98 - .455}{\sqrt{\frac{(.455)(.545)}{98}}} = -7.83$$

The value of Z gives the number of standard deviations from the mean of the normal distribution, and one may then use probability tables to obtain the probability of getting a Z value of a given size or larger purely by chance. Using the census figure of 45.5 per cent Negro (for those 21 and older), gives a value of Z = 7.83, which is used to obtain the probability of getting six or fewer Negro jurors out of a total of 98. This probability is so small that it cannot be found in the normal probability tables given in standard texts, being considerably less than one in ten million. A probability this small means that truly unbiased jury selection would result in six Negroes or fewer out of 98 selections approximately one time in

FIFTY MILLION YEARS, assuming that a total of 98 jurors were selected during each five-year interval! Even if 98 jurors were selected each DAY of each year, results this unusual would occur approximately once every twenty-five thousand years!

9. There is a bias in the tax registration lists, but this will not account for the extremely small percentage of Negro jurors between 1960 and 1964. Investigators found that whites and Negroes were identified separately on the Halifax County tax lists, making possible an actual count of white and Negro taxpayers. In 1960 there were listed 11,512 whites and 7,476 Negroes, giving a figure of 39.4% Negro, as compared with the 1960 census figure of 45.5% Negro (for those persons 21 and over). This difference of 6.1%, while not large, does show that tax records in Halifax County should have been supplemented by other sources before selecting the jury panels.

10. Even if one accepts the tax listings as a valid and unbiased list from which a jury panel should be selected, it can still be shown that random sampling could not have been used in selecting either the total number of jurors between 1960 and 1964, or the specific panel that indicted Charles Parker in 1964. The 1964 tax list contains 7,287 Negroes and 11,718 whites, giving a percentage of Negroes of 38.3%, which is slightly less than the percentage for the 1960 listings. Using this figure of 38.3% as the actual percentage of eligible Negroes, one can again calculate the probability of getting six Negroes or fewer out of 98 panel members. The probability once more turns out to be less than one in ten million, so that it is necessary to reject outright the assumption that the methods of selection were unbiased. Similarly, if one uses the ultraconservative estimate that the percentage of eligible Negroes was only 33.3% in 1964, the probability of getting a SINGLE jury panel consisting of one or no Negroes out of eighteen members is less than seven in a thousand.

11. In summary, the use of probability calculations shows that the chances of getting such small percentages of Negroes as actually were selected by Halifax County officials are so slight that it can unequivocally be asserted that the method of jury selection is definitely biased

against Negroes. Furthermore, the magnitude of the bias is so pronounced that it cannot be accounted for by such simple explanations as a slightly biased tax list.

HUBERT M. BLALOCK, JR.

(Sworn to 5/15/67.)

IN THE SUPERIOR COURT OF HALIFAX COUNTY

[Title Omitted in Printing]

AMENDMENT TO PETITION TO REVIEW CRIMINAL PROCEEDING

The petitioner, by leave of Court first had and obtained, amends his petition heretofore filed in this action as follows:

1. By striking out the first sentence contained in paragraph 6, and inserting in lieu thereof the following:

> 6. Mr. Dwight L. Cranford, of the Halifax County Bar, was retained by the petitioner's parents to represent the petitioner at his trial. The allegation that Mr. Cranford was retained by petitioner's parents is based on the allegation of Mr. Cranford contained in his affidavit, a copy of which is attached hereto.

2. By striking out the following matter from the petitioner's prayer for relief.

> (d) That the Court appoint counsel to represent the petitioner in this proceeding.

SMITH, MOORE, SMITH, SCHELL & HUNTER

By: Norman B. Smith
Attorneys for Petitioner.

(Verified 10/20/67 by Charles Lee Parker.)

AFFIDAVIT OF DWIGHT L. CRANFORD

The undersigned, being first duly sworn, deposes and says:

1. That he is a duly licensed attorney engaged in the general practice of law in Roanoke Rapids, Halifax County, North Carolina.

2. That on or about July 17, 1964, he was employed by Major Parker and Viola Parker, parents of Charles Lee Parker, to represent Charles Lee Parker.

3. That at the August Term, 1964, he represented Charles Lee Parker in Halifax County Superior Court; that at all times he was the privately employed attorney of Charles Lee Parker and never acted as a court-appointed attorney.

This 5th day of September, 1967.

/s/ DWIGHT L. CRANFORD

(Sworn to 9/5/67.)

IN THE SUPERIOR COURT OF HALIFAX COUNTY

[Title Omitted in Printing]

MOTION TO DISMISS

Now comes W. H. S. Burgwyn, Jr., Solicitor of the Third Solicitorial District, State of North Carolina, respondent in the above entitled action, and respectfully moves the court on behalf of said State that the purported petition for application of Post Conviction Hearing Pursuant to G. S. Statute 15-217—15-222 be dismissed for that said petition does not show on its face that there was any substantial denial of the rights of the petitioner under the proceedings complained of under the Constitution of the United States nor under the Constitution of the State of North Carolina, or both; and for that it does not comply with the provisions of G. S. 15-217, et seq.

W. H. S. BURGWYN, JR.,
Solicitor for the Third
Solicitorial District.

IN THE SUPERIOR COURT OF HALIFAX COUNTY

[Title Omitted in Printing]

ANSWER TO PETITION TO REVIEW CRIMINAL PROCEEDING PURSUANT TO G. S. 15-217, *et seq.*

Now comes W. H. S. Burgwyn, Jr., Solicitor of the Third Solicitorial District, State of North Carolina, Respondent in the above entitled action and, answering the Petition to Review Criminal Proceeding, as follows:

1. The allegations contained in paragraph (1) of the petition are admitted.
2. The allegations contained in paragraph (2) on page one of the petition are denied.
2. The allegations contained in paragraph (2) on page two of the petition are denied.
3. The allegations contained in paragraph (3) of the petition are denied.
4. The allegations contained in paragraph (4) of the petition are denied.
5. The allegations contained in paragraph (5) of the petition are denied.
6. The allegations contained in paragraph (6) of the petition are denied.
7. The allegations contained in paragraph (7) and the subsections thereunder of the petition are denied.
8. The allegations contained in paragraph (8) of the petition are denied.
9. The allegations contained in paragraph (9) of the petition are denied.

Wherefore, the respondent, having answered the petitioner's petition, moves that the petition be dismissed and denied.

W. H. S. BURGWYN, JR.,
Solicitor for the Third
Solicitorial District.

(Verified 11/17/67 by Solicitor Burgwyn.)

IN THE SUPERIOR COURT OF HALIFAX COUNTY

ORGANIZATION OF COURT—October 23, 1967

HONORABLE JOSEPH W. PARKER, JUDGE PRESIDING;
HONORABLE W. H. S. BURGWYN, JR., SOLICITOR;
HONORABLE J. REUBEN DANIEL, SHERIFF OF HALIFAX COUNTY;
HONORABLE J. C. TAYLOR, CLERK OF SUPERIOR COURT;
Mrs. Ann Williams, Court Reporter.

[Title Omitted in Printing]

ORDER ALLOWING AMENDMENT TO PETITION TO REVIEW CRIMINAL PROCEEDING

THIS CAUSE, coming on to be heard and being heard before the undersigned Judge of the Superior Court of Halifax County, upon motion of the petitioner for leave to file amendment to his petition in the above entitled action, as set out in the amendment to the complaint prepared and tendered by the petitioner, and the Court in the exercise of its discretion being of the opinion that such motion should be granted;

IT IS NOW ORDERED that the petitioner be, and he hereby is allowed to file said amendments as part of the record of this action, and the respondent is allowed 30 days from the date of this order in which to file answer or demurrer to said amendments.

This 1st day of November, 1967.

JOSEPH W. PARKER
Judge Presiding.

BE IT REMEMBERED that a Special Civil Term of Superior Court for Halifax County, North Carolina, is begun and held on this the second Monday after the fourth Monday in October, it being Monday, November 13, 1967;

HONORABLE JOSEPH W. PARKER, JUDGE PRESIDING;
HONORABLE J. REUBEN DANIEL, SHERIFF OF HALIFAX COUNTY;
HONORABLE J. C. TAYLOR, CLERK OF SUPERIOR COURT;

Miss Sallie Dickens, Court Reporter.

(COMMISSION of the Chief Justice to the Honorable Joseph W. Parker to hold a one-week Special Session of the Halifax Superior Court beginning 13 November 1967, for the trial of Civil cases, appears in the original transcript on file in the Office of the Clerk.)

NORTH CAROLINA
HALIFAX COUNTY

Court met today, Saturday, November 18, 1967, at 10 A.M. Minutes of the preceding meeting were read, corrected and approved and the following proceedings were had and taken, to wit:

T. D. No. 7518

STATE OF NORTH CAROLINA

v.

CHARLES LEE PARKER

POST CONVICTION HEARING

Court adjourns in this matter till 10 A.M. Tuesday, December 19, 1967.

Whereupon Court adjourns sine die, November 18, 1967.

/s/ JOSEPH W. PARKER
Judge Presiding.

IN THE SUPERIOR COURT

December 19, 1967

NORTH CAROLINA
HALIFAX COUNTY

Court met today pursuant to a recess on November 18, 1967, at 10 A.M. The following proceedings were had and taken, to wit:

CHARLES LEE PARKER

v.

STATE OF NORTH CAROLINA

JUDGMENT OF PARKER, J.—(12/19/67)

The above-entitled matter came on for hearing and was partially heard on November 13, 1967, in the courthouse at Halifax, Halifax County, North Carolina, upon an application to set aside a sentence heretofore imposed in the Superior Court of Halifax County and grant a new trial to the petitioner, the defendant Charles Lee Parker, at this hearing under the Post Conviction Act of the General Statutes of North Carolina; that the petitioner defendant was represented by Mr. Norman Smith, of the Greensboro, North Carolina, Bar, and the State was represented by the Honorable W. H. S. Burgwyn, Jr., Solicitor, and the Honorable Willis E. Murphy, III, Assistant Solicitor; that, after a partial hearing, the Court, on page 45 of the record, adjourned the hearing and continued the same until ten o'clock Tuesday morning, December 19, 1967, for the primary purpose of allowing the petitioner defendant to secure certain information from the office of the Register of Deeds of Halifax County which was not available on said date of November 13, 1967; that, upon a full and complete hearing concluded on this the 19 day of December, 1967, the Court finds as a fact that the petitioner defendant was charged in a bill of indictment returned by the grand jury at the August Term, 1964, charging the capital offense of burglary and that upon a plea of guilty at said term of court said petitioner defendant was sen-

tenced by the Honorable Howard H. Hubbard, Judge presiding, to the State Prison for the term of his natural life. The Court further finds the following facts:

(Petitioner defendant was arrested at approximately 9:30 to 11:00 P.M. on July 16, 1964, while burglarizing, or attempting to burglarize the home of Mr. and Mrs. Silas M. Rowland in the City of Roanoke Rapids, Halifax County, North Carolina, it being the identical home that he had a few nights previously burglarized and raped the female occupant;)

(EXCEPTION #53)

that he was carried to the police station and held for further investigation; that petitioner defendant refused to give his name and address and that, upon ascertainment by the officers of sufficient information of his identity, his mother, with whom he lived at the time, was notified by the Police Department of Roanoke Rapids about 4:30 A.M. of the following day, that is within approximately six hours of his arrest; that the mother of said petitioner defendant, upon the opening of the law office of Allsbrook, Benton, Knott, Allsbrook and Cranford early in the morning of July 17, 1964, employed the services of Honorable Dwight Cranford, a member of said firm, who is and was an experienced, learned, diligent and astute attorney and counsel at law, who immediately thereafter contacted said petitioner defendant and began preparation of his defense; (that said petitioner defendant freely admitted to his attorney his guilt of the crime with which he was charged, in fact said petitioner defendant Charles Lee Parker, upon cross examination at this hearing, and the Court so finds as a fact, has freely admitted his guilt of the capital offense of burglary and rape; however, said defendant has not at this date been indicted nor placed on trial for the capital offense of rape;)

(EXCEPTION #54)

(that the petitioner defendant was tried at said August Term, 1964, upon a bill of indictment returned by a properly and legally constituted grand jury, nine of which were selected at the first term of Halifax County Superior

Court at the beginning of the spring session of 1964, and nine at the beginning of the fall session of said Court by a child under ten years of age from the regular jury panel summoned, at each term; that there was one Negro present on the grand jury which returned said bill of indictment a true bill; that there has been so systematic or purposely exclusion of persons of any race in selection of those for jury service by the Board of Commissioners of Halifax County; that said commissioners have excluded from jury service persons white, Negro, Indian and others who in its opinion were infirm in body or mind, had been convicted of felonies, or otherwise incompetent under the applicable provisions of the law of North Carolina;)

(EXCEPTION #55)

(that as the record unquestionably reflects, and the Court so finds as a fact, said petitioner defendant Charles Lee Parker, freely, voluntarily, without threat, coercion or duress, entered a plea of guilty to the offense of first-degree burglary before His Honor Howard H. Hubbard at the August Term, 1964, of the Superior Court of Halifax County and was thereupon sentenced as required by law to the North Carolina State Penitentiary for the term of his natural life;)

(EXCEPTION #56)

(that the petitioner defendant has stated at this hearing that he was content with his plea and sentence and completely satisfied with the effort of his attorney, the Honorable Dwight Cranford, until some few months after incarceration when he learned that other persons had been sentenced to five to six years for the same crime with which he was charged, which statement as to a sentence of five to six years for the identical crime charged against petitioner defendant, Charles Lee Parker, is erroneous in law and false in fact, although said petitioner defendant might have considered the same true;)

(EXCEPTION #57)

(that no particular statement has been made at these hearings denying the truthfulness of the petitioner de-

fendant's plea and guilt of the offense charged. To the contrary, the petitioner defendant, in person and from the witness stand, under oath, has admitted on cross examination the truth of the charge).

(EXCEPTION #58)

The petition of the petitioner defendant, Charles Lee Parker, is hereby denied.

It is so ordered this 19 day of December, 1967.

JOSEPH W. PARKER
Judge Presiding.

APPEAL ENTRIES

To the foregoing judgment the petitioner in open court gives notice of appeal to the North Carolina Court of Appeals; further notice waived.

It further appearing to the Court that the petitioner is an indigent, it is ordered that no bond for this appeal be required.

Upon motion by the defendant, through counsel Mr. Norman Smith, that the defendant be allowed to appeal in forma pauperis, for that he is unable to defray the cost of a record, the Court finds as a fact that the defendant is indigent and unable to defray the cost of the record for the purpose of appeal; whereupon it is ordered that the County of Halifax furnish to Mr. Norman Smith, Attorney for the Defendant, a copy of the record of this hearing.

Petitioner is allowed 45 days in which to serve case on appeal. The State is allowed 30 days thereafter to serve countercase or exceptions.

This the 19 day of December, 1967.

JOSEPH W. PARKER
Judge Presiding

IN THE COURT OF APPEALS OF NORTH CAROLINA

[Title Omitted in Printing]

PETITION AND APPLICATION FOR WRIT OF CERTIORARI

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEALS OF NORTH CAROLINA:

Charles Lee Parker, the petitioner in the above-entitled proceeding, respectfully petitions and makes application to this Honorable Court for a writ of certiorari to issue in this case which was heard at the November 13, 1967, Special Civil Session of the Superior Court of Halifax County. As grounds for this petition and application, the petitioner respectfully shows to the Court:

1. This is a proceeding under the North Carolina Post-Conviction Hearing Act, G. S. 15-217, et seq. The petitioner was sentenced to life imprisonment upon a guilty plea in the Halifax County Superior Court on August 18, 1964. In this proceeding, your petitioner alleged that the acceptance of plea and imposition of sentence upon him were in violation of the Constitution of North Carolina and the Constitution of the United States in the following particulars:

(a) An involuntary confession of crime was coerced from the petitioner by members of the Roanoke Rapids police force, and the petitioner's plea of guilty was a product of the coerced confession, and therefore the plea of guilty was involuntary, and the imprisonment of the petitioner under a sentence based on such an involuntary plea of guilty, is in violation of the 5th, 6th and 14th Amendments to the Constitution of the United States of America, and Sections 11 and 17 of Article I of the Constitution of North Carolina;

(b) The indictment of the petitioner was invalid in that members of the petitioner's race had been and were systematically excluded from the grand juries of Halifax

County, and the imprisonment of the petitioner based on a conviction and sentence on such an indictment, without an intelligent waiver by the petitioner of his right to be indicted by a legally-constituted grand jury, is in violation of the 5th and 14th Amendments to the Constitution of the United States of America, and of Sections 1, 12, and 17 of Article I of the Constitution of North Carolina.

2. At the post-conviction hearing, the petitioner offered evidence tending to prove the following facts with respect to his indictment by a grand jury:

(a) The petitioner is a Negro;

(b) The 1960 tax levy of Halifax County showed approximately 11 thousand white taxpayers and approximately 7 thousand colored taxpayers. The 1964 tax levy of Halifax County showed approximately 11 thousand white taxpayers and 7 thousand Negro taxpayers;

(c) The 1960 Census of Halifax County showed that the population of Halifax County was 45.3 white and 54.7 Negro. The 1960 Census of Halifax County showed that the population of Halifax County of persons 21 years of age and over was 54.5 white and 45.5 non-white (the non-whites being 98% Negro);

(d) From January, 1960, through August, 1964, the total numbers of jurors serving on all jury venires in Halifax County were 2,820 white persons and 134 colored persons;

(e) The grand jury which indicted the petitioner in August, 1964, was composed of seventeen white persons and one colored person.

(f) On all the grand juries drawn between January, 1960, and August, 1964, there were 91 white persons and 8 colored persons.

(g) Neither the petitioner's counsel nor any other person at the time of his trial and sentence brought to petitioner's attention the racial composition of grand juries in Halifax County, and before entering his plea of guilty, the petitioner did not consider whether he had been validly indicted or whether he had a right to challenge his indictment.

None of the above evidence was refuted or disproven by the State, nor did the State introduce any evidence to the contrary, excepting the unsupported opinion of the Clerk to the Halifax County Jury Commission that the Commission had not purposely excluded Negroes from service on the grand jury.

3. In the post-conviction proceeding, the petitioner introduced evidence tending to prove the following facts relevant to the issue of whether his sentence was based on a coerced guilty plea:

(a) The petitioner was arrested and tried at a time when he was fifteen years old.

(b) He was arrested at gunpoint by officers of the Roanoke Rapids Police Department, and was taken to an interrogation room at the City Police Department. There he was interrogated for an hour or two. He told the officers he wanted to see his lawyer and his mother; they said he would not see them until he told them what the officers wanted to know. During his interrogation, the petitioner refused to tell the officers anything, even his name. He was not given anything to eat or drink. Thereafter, he was put in a cell by himself. There was a drinking fountain in the cell, but no water came out of it. He stayed in the cell until the next day, at which time he was taken out and questioned again by some of the officers. The officers promised the petitioner that they would help him the best they could if he would confess. During this second interrogation, the petitioner made a statement and then signed a confession to the effect that he had broken into the house. He was interrogated on this second occasion for about an hour. It was not until after he confessed that the petitioner was given anything to eat. The petitioner was arrested during the evening of July 16, 1964, and the confession was obtained sometime the following morning.

(c) At about 3:40 A.M. on the day following petitioner's arrest, officers of the Roanoke Rapids Police Department notified the petitioner's mother, Mrs. Viola Parker, that her son was in custody. The police told Mrs. Parker that it would be no use for her to come to

see her son at the police station, because under no circumstances would she be admitted.

(d) After the petitioner confessed, he was taken to the Halifax County jail, where he stayed until August 18, 1964. The petitioner's sister, Doris Jean Usserey, attempted to visit the petitioner while he was in jail on three different occasions. Miss Usserey called to the County jail to find out what visiting hours were, and each time she attempted to visit the petitioner, she came at a time which she had been advised was in the visiting hours period. On each occasion, officers at the jail refused to let Miss Usserey see the petitioner. The petitioner's mother was delivered of a baby a few days after petitioner's arrest, and she did not see him until the day before the trial. The petitioner did not see any member of his family from the date of his arrest until the day before his trial.

(e) The attorney for the petitioner, retained by his family, said that since the petitioner had given the confession there was not much the attorney could do and about the best thing would be for the petitioner to plead guilty.

(f) The petitioner did not consider that he would be able to prevent the involuntary confession which he had made to the police, from being used against him at the trial, and the threatened use of the involuntary confession was a motivating factor in the petitioner's decision to plead guilty.

(g) A psychiatric evaluation of the petitioner made within two weeks after he was taken to Central Prison revealed that petitioner's behavior could be easily swayed, that he was likely to enter into activities impulsively, and there were no inhibitions which would prevent him from engaging in behavior that presented itself as a means of securing his immediate goals.

In rebuttal of the above, the State offered evidence tending to prove the following facts:

(a) Mr. Dwight Cranford, the petitioner's attorney, talked to the petitioner shortly after the petitioner had confessed on the morning following his arrest. The petitioner told Mr. Cranford that no threats or promises

had been made to him, and that he was not scared. Mr. Cranford discussed the case further with the petitioner at the Halifax County jail. Mr. Cranford saw the petitioner "not more than once or twice" during the time he was in the County jail and before the week of the trial. During the week of the trial, Mr. Cranford spent most of the days af August 17 and August 18 with the petitioner and his mother in one of the side rooms at the courthouse.

(b) The petitioner's mother, Viola Parker, signed an affidavit saying that she knew and understood the nature and seriousness of the charge of first-degree burglary pending against the petitioner, that she had discussed the matter with Mr. Cranford, with her husband, and with the petitioner, and that after full discussion and consideration she consented to the petitioner's entering the guilty plea.

(c) The petitioner signed a statement saying that he was aware of the charge of first-degree burglary against him, that he had been explained the nature and seriousness of the charge, that he had not been threatened or abused in any manner, and that no promises had been made to him to induce him to plead guilty, that he had discussed the matter with his lawyer and his mother, and that he authorized his lawyer to enter a plea of guilty to first-degree burglary with the understanding that he would be sentenced to life imprisonment.

4. During the post-conviction proceeding, the Superior Court committed a number of prejudicial and reversible errors in admitting the evidence over petitioner's objection, and excluding evidence offered by the petitioner. These errors are set out and grouped in the petitioner's Assignments of Error. In summary, these errors in the admission and exclusion of evidence are as follows:

(a) Excluding evidence of the petitioner's thoughts as to whether or not the police would be able to use the petitioner's confession against him in trial.

(b) Admitting evidence which pertained only to the question of petitioner's guilt or innocence of the crime of which he was convicted.

(c) Admitting evidence which pertained only to statements made by thoughts of the petitioner and his mother during the several months subsequent to the petitioner's trial and sentence, such as evidence of a letter written by the petitioner to his attorney some 30 to 60 days after he had been in prison, expressing appreciation for what the attorney had done for him.

(d) Excluding testimony of an expert statistician offered by the petitioner to show the probabilities of arriving at a racial distribution of grand jurors in Halifax County on an unbiased basis, identical to the actual racial distribution of grand jurors during the four and one-half years preceding the petitioner's indictment, and as to the specific grand jury which returned the indictment against the petitioner.

5. During the post-conviction proceeding, the Superior Court committed prejudicial and reversible error in the following respects:

(a) Refusing and failing to rule on petitioner's objections to questions asked by the Solicitor.

(b) Refusing to permit the petitioner to place on the record for consideration by the Court of Appeals the testimony of a witness to which the Solicitor's objection had been sustained.

To these errors, exceptions were taken and assignments of error were made.

6. The order of the Superior Court of Halifax County denying the relief prayed for by the petitioner is erroneous and reversible in that it contains findings of fact which do not pertain to any issues or questions of fact properly before the Court. Specifically, it contains findings of fact that the petitioner was in fact guilty of the crime with which he was charged, and that the petitioner was satisfied with the results of his trial and sentence until several months after he had been in the State prison. These errors are the subjects of exceptions and assignments of error.

7. The Superior Court of Halifax County committed reversible and prejudicial error in its order denying the relief prayed for by the petitioner, by making findings

adverse to the petitioner on the two substantive issues raised in the petition, as follows:

(a) The Court's finding that there has been no systematic or purposeful exclusion of persons of any race in selection for jury service in Halifax County, and that the grand jury which indicted the petitioner was legally constituted, is erroneous because it is not supported by any competent evidence, and because more particularly the State, as a matter of law, failed to overcome the prima facie case of systematic exclusion of Negroes from service on Halifax County grand juries because of race, which arose from the petitioner's evidence.

(b) The finding that the petitioner freely, voluntarily, without threat, coercion or duress, entered a plea of guilty to the offense of first-degree burglary is erroneous because, being a question of both fact and law, it is not supported by sufficient evidence.

To the above errors, the petitioner entered exceptions and made assignments of error.

8. In open Court, the petitioner gave notice of petition to the Court of Appeals of North Carolina for a writ of certiorari, and further notice was waived. The Court found that the petitioner is indigent and ordered that no bond be required and that the County furnish a copy of the record to the petitioner. The petitioner attaches hereto and makes a part hereof the record of the proceedings before the Superior Court of Halifax County, the case on petition for a writ of certiorari, and the petitioner's Assignments of Error.

WHEREFORE, the petitioner prays the Court that writ of certiorari issue to the Superior Court of Halifax County, and that the petitioner be given leave to proceed in this Court in forma pauperis.

This 14th day of February, 1968.

Respectfully submitted:

By: /s/ NORMAN B. SMITH
Attorney for Petitioner

(Verified 2/14/68 by Norman B. Smith, Attorney for Petitioner.)

COURT OF APPEALS OF NORTH CAROLINA

[Title Omitted in Printing]

Order Allowing Petition for Writ of Certiorari

This matter came on to be considered upon a Petition for Writ of Certiorari on the 14th day of March, 1968, by the North Carolina Court of Appeals, to whom it appeared that the said petition should be allowed;

NOW, THEREFORE, it is ordered accordingly by the Court in Conference that the petition be, and the same is hereby allowed and that the case is set for hearing at the Call of the Calendar of the Fourth, Fifth, Sixth and Eighth Districts and will be heard in its regular order at the Spring Session, 1968, and that it be so certified to the Clerk of the Superior Court of Halifax County, North Carolina. Morris, J., did not participate.

Witness my hand and official seal this the 15th day of March, 1968.

/s/ Theodore C. Brown, Jr.
Clerk of the Court of Appeals

COURT OF APPEALS OF NORTH CAROLINA

[Title Omitted in Printing]

Statement of Case on Appeal

This was a matter that came on for hearing pursuant to the provisions of the North Carolina Post Conviction Hearing Act, G. S. 15-217, et seq., and being heard before His Honor John W. Parker, Judge Presiding, at the November 13, 1967, session of Halifax County Superior Court, and again out of session at the Halifax County Courthouse on December 19, 1967. The petitioner was represented by Norman B. Smith, of the firm of Smith, Moore, Smith, Schell & Hunter, of Greensboro, North Carolina. The State was represented by the Honorable

W. H. S. Burgwyn, Solicitor, and the Honorable Willis E. Murphy, III, Assistant Solicitor. The petitioner was heard upon allegations that the sentence of life imprisonment he was then serving, imposed upon him on August 18, 1964, by the Halifax County Superior Court, the Honorable H. H. Hubbard, Judge Presiding, following a plea of guilty of the crime of first-degree burglary, was void and should be set aside, for violation of the rights of the petitioner under the Constitution of North Carolina and the Constitution of the United States of America, in the following respects:

(a) An involuntary confession of crime was coerced from the petitioner by members of the Roanoke Rapids police force, and the petitioner's plea of guilty was a product of the coerced confession, and therefore the plea of guilty was involuntary, and the imprisonment of the petitioner under a sentence based on such an involuntary plea of guilty, is in violation of the 5th, 6th and 14th Amendments to the Constitution of the United States of America, and Sections 11 and 17 of Article I of the Constitution of North Carolina;

(b) The indictment of the petitioner was invalid in that members of the petitioner's race had been and were systematically excluded from the grand juries of Halifax County, and the imprisonment of the petitioner based on a conviction and sentence on such an indictment, without an intelligent waiver by the petitioner of his rights to be indicted by a legally-constituted grand jury, is in violation of the 5th and 14th Amendments to the Constitution of the United States of America, and of Sections 1, 12, and 17 of Article I of the Constitution of North Carolina.

The State answered the petition by denying all the allegations therein to the effect that the petitioner's constitutional rights had been violated. The Court entered an order finding as fact that none of the petitioner's constitutional rights had been violated in his trial, and denying the relief prayed for in the petition. Thereupon, the petitioner gave notice of a petition for a writ of certiorari to the Court of Appeals of North Carolina, and moved that the appeal be in forma pauperis. Fur-

ther notice of appeal was waived. The Court allowed the petitioner's motion to proceed in forma pauperis, ordering that no appeal bond be required and ordering the County of Halifax to pay the costs of the petition for a writ of certiorari. The Court of Appeals allowed petitioner's petition for writ of certiorari on March 14, 1968.

PETITIONER'S EVIDENCE

CHARLES LEE PARKER, Petitioner, (sworn) testified as follows:

I reside at Odom Prison, under sentence of Halifax County Superior Court for conviction of first-degree burglary, entered on August 18, 1964. I am an eighteen-year-old Negro. I was arrested for the offense for which I am presently serving time, during July of 1964. I was fifteen years of age at that time. My sixteenth birthday was in April, 1965.

At the time I was arrested, I walked into a yard and went up to a door. A cop jumped up. I started to run and he told me not to run, and I stopped. He asked me at the police station who I was. I wouldn't tell him and said I wanted to see my lawyer and my mother. He said I couldn't see my lawyer and my mother. He said I couldn't see anybody. The police officer had a pistol. He said to stop or he would shoot, and I stopped. I was taken to jail in a police squad car, and was not handcuffed.

After being taken to the Police Department in Roanoke Rapids, I was questioned. I would not tell who I was. I told them I wanted to see my lawyer and my mother. They said I could not see them until I told them what they wanted to know. After this, they kept me in that little room "I don't know how long," and then put me in a cell. I think there were three white officers with me. It was about 11:00 P.M. at that time. They asked me my name, but I did not tell them anything at that time. I was kept there an hour or two. I was not given anything to eat or drink. They asked me my name and

I wouldn't tell them. They asked me where I was from and I wouldn't tell them that. They asked me about some other stuff, whether I broke in any houses, and I don't remember whether they referred to any specific houses. After the questioning ended, I was put in a cell by myself. There was no light in the cell, but there was a light in the hall, and a little of this light came into the cell. There was a drinking fountain in the cell, but no water in it. I stayed in the cell until the next day, but I don't know what time it was that I came out. I didn't get anything to eat, until I got ready to come to Halifax. After being taken from the cell, I was questioned again by one of the officers present in the Court today and by Chief Daniels.

MR. SMITH: Did these officers make any promises to you at that time?

WITNESS: They said they would help me the best they could. They didn't say what they would do.

They didn't say under what circumstances they would help me. I told them I wanted to see my lawyer, Cranford. They told me to tell them what I did. I told them, made a statement to them. I told them that I broke into the house and when I broke in, and signed a confession. They put me back in the cell. I was in the interrogation room about an hour then. I signed the confession before I went back in the cell. I stayed there about five minutes and the lawyer came. He was the first person I saw other than a policeman. The lawyer was Mr. Dwight Cranford. I saw him about fifteen or twenty minutes. Then I went back to my cell, and an hour or two later I was brought to Halifax. Before being brought to Halifax I was given two sandwiches to eat, about ten or fifteen minutes before getting ready to leave for Halifax. This was before I talked to Mr. Cranford, and after I made the confession. The policeman said they had forgotten I was down there. I was given drinking water the second time I was interrogated.

I was then taken to Halifax County jail, where I stayed until August 18. On August 18, I was tried and carried to Raleigh. I was told that my parents or relatives came to visit me while I was at the Halifax County jail, but I never did get to see them.

MR. BURGWYN: Objection.

I saw my attorney again the day I was tried. My attorney told me that he would do all he could to help me but there was not much he could do, and about the best thing I could do was plead guilty. He asked me about the confession or statement I had given to the police, and he said that since I had given the confession, there wasn't much he could do and about the best thing I could do was plead guilty. I then decided to plead guilty and did plead guilty.

MR. SMITH: In coming to this decision, did you consider whether or not the police would be able to introduce this statement you made in evidence against you?

MR. BURGWYN: Objection.

COURT: Sustained.

EXCEPTION # 1.

WITNESS (continuing): I did give thought to the statement that I had given to the police. I though that since I had told them everything and they knew everything, there wasn't much that my attorney could do.

MR. SMITH: Did you give any thought to whether or not the police would be permitted to give this statement in evidence at the trial?

MR. BURGWYN: Objection.

COURT: Sustained.

EXCEPTION # 2.

WITNESS (continuing): I did not know whether or not I had been indicted by the grand jury before I made the guilty plea.

MR. SMITH: Did you know anything about the racial composition of the Halifax County Grand Jury at the time you made your plea?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS (continuing): I can't say I knew anything about the racial composition of the Halifax County Grand Jury. While at the County jail, I asked one of the guards whether my relatives would be permitted to see me, and he said, "Yes, on visiting day."

MR. SMITH: Going back to testimony about what the officers told you during the interrogation, something to the effect that they would help you, didn't you testify to that?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: They said they would help me the best they could.

MR. SMITH: Did they say what you would have to do in order for them to do so?

MR. BURGWYN: Objection.

COURT: Overruled. Let the witness testify.

WITNESS (continuing): They said if I told them what I knew, they would help me the best they could.

CROSS EXAMINATION

On the night that the officers apprehended me, I was in a yard. It was not my yard, and I don't know whose yard it was.

MR. BURGWYN: You know it was the yard of Mr. Roland, didn't you?

WITNESS: I didn't know whose yard it was.

MR. SMITH: Objection.

COURT: Overruled.

WITNESS (continuing): I didn't know exactly whether it was the yard of a home I had been into before. I wasn't far from the porch; I was in the yard about ready to go to the porch. My hand was not on the door. There was not any knob. I had not pushed the screen, pulled the door, or touched the door. I don't know what time of night it was; I didn't have a watch. It was not after midnight; it was about 11:00 o'clock. The officer stopped me as he came out of the door. I refused to tell him my name and tell him where I was from. He did not ask me anything there; I refused to tell him that at the Police Department. I did not know whether any other officers were in the yard or neighborhood. I had been to a house in that neighborhood before.

MR. BURGWYN: And went in the nighttime?

MR. SMITH: Objection.

EXCEPTIONS 3 and 4.

WITNESS: That's right.

MR. BURGWYN: And you had intercourse with the woman against her will?

MR. SMITH: Objection.

EXCEPTIONS 5 and 6.

WITNESS: I can't say against her will. She didn't say anything about it.

MR. BURGWYN: You didn't tell her who you were?

MR. SMITH: Objection.

EXCEPTIONS 7 and 8.

WITNESS: She didn't ask me.

MR. BURGWYN: You didn't turn any light on in the room?

MR. SMITH: Objection.

EXCEPTIONS 9 and 10.

WITNESS: Didn't need no light.

MR. BURGWYN: She had never invited you there?

MR. SMITH: Objection.

EXCEPTIONS 11 and 12.

WITNESS: She didn't tell me not to come.

MR. BURGWYN: She didn't know you?

MR. SMITH: Objection.

EXCEPTIONS 13 and 14.

WITNESS: I didn't know her either. The officers carried me to the police station later. They wouldn't give me anything to eat or water, and wouldn't let me see anybody. I don't know what time it was. I eat supper every night, and had had supper this night. I asked the cop in the room with me for water. I don't know who he was, and I could not point him out today. I told him I wanted to see my lawyer and my mother. That was after I had gotten to the police station. I had been talking to Mr. Allsbrook, the lawyer, previously. I did not have to tell the officers what lawyer I wanted, because they told me I couldn't see anybody until I told them what they wanted to know. I did not tell them who my lawyer was or who my mother was. He said I couldn't see anybody. The next day after talking with Mr. Wheeler, I saw Mr. Cranford, the lawyer. I did not see

my mother. Mr. Cranford told me that my mother had been to see him. Up to that time I had refused to tell the officers even my name. I had made the confession before Mr. Cranford got there, about fifteen or twenty minutes before he arrived. The officer asked me to tell him about it, and I told him I might as well. They did not catch me in the act; I was in the yard, and that was just trespassing.

MR. BURGWYN: At the time you were in jail and these officers talked to you, you knew at that time, and I am not talking about what you heard since then, that they had caught you in the act and you were guilty and wanted to get it off your conscience?

WITNESS: At that time I did. I talked to Mr. Cranford after I made the confession. I was brought to Halifax jail and stayed there at least thirty days before I was tried. I did not get to see my mother until I came to be tried. I was told my mother and father and sister all came to see me, and they were told it wasn't visiting day. I did not tell anybody in jail that I wanted to see my people. I wrote and told my mother to tell my lawyer to get in touch with my people. The letter was mailed, but I don't know whether my mother got it. She didn't tell me whether she had gotten it after I saw her, because I had been in prison then and it was too late, and I wasn't thinking about the letter when I saw her at the time of the trial.

I don't remember your reading the bill of indictment or anything to me at the time at the time of the arraignment.

MR. BURGWYN: And I asked you how you would be tried and you said, "By God and my Country"?

WITNESS: I remember he told me something to say. I figured I was going to the penitentiary anyway and no use listening to the rest of it. I never pleaded not guilty to the bill of indictment. Mr. Cranford talked to me and my mother and told me what I was charged with, and if the jury found me guilty, the punishment was that I would be sent to the gas chamber. My mother and my lawyer talked with me about the case. I did not insist that Mr. Cranford pleaded me guilty. He said it was the best thing to do, and I pleaded guilty.

I don't remember getting up and getting sworn to answer any questions in the Court. When the Judge asked me how old I was, I said, "15."

MR. BURGWYN: You told him 16. How old were you?

WITNESS: 15. I was born April 28.

MR. BURGWYN: He read to you, "You have been charged with burglary in the first degree. You have been arraigned on that charge and have presented to me through your counsel a plea of guilty. Do you understand what you have signed?" and your answer was, "Yes, sir." The Judge asked you, "Do you understand since the State accepts the plea, the judgment of the Court is that you be imprisoned in the State's Prison for life?" and you said, "Yes, sir." Then the Court said to counsel, "These questions have no reflection on you." Mr. Cranford said, "I understand and want them to be asked." Then the Court asked you, "Has anybody made you any promise or forced you in any way to make this plea?" and you answered, "No, sir." The Court asked you what grade you were in and you said the ninth grade. "Have you passed all of your work up to the ninth grade? I want to find out your degree of intelligence," and you answered, "I didn't this year." "You failed this year?" "Yes, sir." "Is your mother sitting beside you?" "Yes, sir." "Did you sign this plea freely without any fear or compulsion?" "Yes, sir." "Has any person promised you anything if you do this?" and your answer was, "No, sir." "Do you understand you will be sentenced for the rest of your life in the State's Prison?" and your answer was, "Yes, sir." You remember those questions that were asked?

WITNESS: I remember most of them.

MR. BURGWYN: I ask you if your mother wasn't sworn and the Court asked her some questions as follows:

> "Mrs. Parker, mother of the defendant, being sworn, testified:
>
> Q Do you understand what he is doing?
> A Yes, sir.
> Q Is his father living?
> A Yes, sir.

Q Is he in court?
A No, he is out of town.
The Court finds that the prisoner under oath understands thoroughly the import of his plea and it is made freely and voluntarily."

What I have just read is true?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: I can't say whether this is all true, because I don't remember all of it. I do remember some of it.

MR. BURGWYN: I asked you if before you signed the plea of guilty that you were advised by Mr. Cranford of all your rights?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: Mr. Cranford didn't tell me anything about any rights. He asked me about the confession, and I told him I signed the confession. He said the best thing to do is to plead guilty, and I would get a life sentence out of it. I did not want to plead guilty. I wanted to get out of jail. I did not discuss this matter two other lawyers; they were there to sign that paper.

MR. BURGWYN: They were witnesses to the paper authorizing Mr. Cranford to make this plea in your behalf.

COURT: You say that is all the others did, just signed as a witness to your signature?

WITNESS: They didn't say anything to me. The other lawyers talked to Mr. Cranford. My mother was in the room. That is my signature on the plea of guilty. I don't know whether I signed what you have just read, but I know that is my signature on it. I don't recall whether this paper was read to me before I signed. I don't remember after pleading guilty and being sentenced, telling Mr. Cranford how much I appreciated everything he had done for me. I did not appreciate getting life in the penitentiary.

MR. BURGWYN: I ask you after you were in prison some thirty to sixty days if you didn't write Mr. Cran-

ford a letter telling him how much you appreciated what he had done for you?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION # 15.

WITNESS: I don't remember writing Mr. Cranford, either. I don't know if this piece of paper is my handwriting, because I have stopped writing and print. This signature favors mine, but I can't say that it is mine.

MR. BURGWYN: I read it to you, and this was written from Central Prison about one week after you were sent to prison:

> Dear Mr. Cranford: I received a letter from my mother and she told me what you said. We plan on following all the rules that they make before me. But anyway I am glad the placed me in prison because I was going to quit school and I know I would have got in some trouble. It's not all bad here. I get a chance to finish school. I suppose to go to Polk Youth Center and I can take a trade. And I am very sorry I caused you all the trouble at the trial. Oh they say be in Raleigh a while I suppose to see a doctor. They think I am crazy. Well I want to thank you for all you did for me.
>
> Charles Lee Parker

You wrote that letter, didn't you?

MR. SMITH: Objection.

EXCEPTIONS 16 and 17.

WITNESS: I don't recall.

MR. BURGWYN: At the time Mr. Cranford represented you and at the time you wrote this letter, I ask you this one question: were you not at that time completely satisfied with Mr. Cranford's representation of you in Court?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION # 18.

WITNESS: Other than about thirty days after I g[illegible] in the penitentiary, I thought he did the best he could. I don't recall writing that letter. I began to become dissatisfied when I talked to a boy and he said they gave me a raw deal. His name is Roy Bryant, and he is now out in the free world. A lawyer by the name of Haithcock wrote me from Alexandria, Va.

MR. BURGWYN: Where did you get to know him?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: My mother told me about him two years after I had been in prison. I have the names mixed up. Mr. Haithcock is the lawyer that wrote me about my case. I don't know who employed him.

MR. BURGWYN: Did you ever talk to him?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION # 19.

WITNESS: Yes, sir.

MR. BURGWYN: Where?

MR. SMITH: Objection.

EXCEPTIONS 20 and 21.

WITNESS: In the penitentiary.

MR. BURGWYN: After he wrote you, or before?

MR. SMITH: Objection.

EXCEPTIONS 22 and 23.

WITNESS: He came to see me and then wrote me.

MR. BURGWYN: Why did he come to see you?

MR. SMITH: Objection.

EXCEPTIONS 24 and 25.

WITNESS: I guess to help me. People in Halifax County did me so wrong.

MR. BURGWYN: For what?

MR. SMITH: Objection.

EXCEPTIONS 26 and 27.

WITNESS: Give me life sentence for what boys in other counties usually get five to six years for.

MR. SMITH: Motion by petitioner to strike.

COURT: Motion denied.

EXCEPTION # 28.

MR. BURGWYN: You went into a woman's home in the middle of the night, who didn't know you and you didn't know her, had intercourse with her and plead guilty to first-degree burglary?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION # 29.

WITNESS: Yes, sir. Mr. Cranford was employed by my mother. I was completely satisfied with his services up until the time I found out he had done nothing for me. He did not save my life; he took it. Before I signed my plea of guilty, I knew that I would get life sentence in the penitentiary. My parents tried to see me in jail.

MR. BURGWYN: Your father wasn't here at your trial. You were tried for your life and your father didn't have enough interest to come to Court?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION # 30.

WITNESS: My mother was here. I haven't learned anything since I've been in prison, except how to box. I was printing before I left the street.

REDIRECT EXAMINATION

I had psychiatric treatment at Central Prison. I am still receiving psychiatric treatments.

MR. SMITH: What kind of treatment?

WITNESS: They just ask me some questions.

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: I think I had three sessions with the psychiatrist.

MR. SMITH: Did the psychiatrist tell you you had any mental problem?

MR. BURGWYN: Objection.

WITNESS: He didn't say anything. He just ask me some questions. I did not request you as counsel.

MRS. VIOLA PARKER (sworn) testified for the petitioner as follows:

I am the mother of the petitioner. The petitioner was born April 28, 1949, in Halifax County. He had to have a birth certificate when he started to school. I did not recently get one.

MR. SMITH: Didn't you send me a copy of a birth certificate?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: Yes, I did send you a birth certificate. The certificate which you just handed me is the one that I sent. I got it from Mr. Wilson, the Register of Deeds.

MR. SMITH: Is the information contained on that copy correct?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: Yes, the information is correct.

MR. SMITH: I would like to introduce Petitioner's Exhibit 1, the birth certificate, into evidence.

COURT: ALLOWED.

WITNESS (continuing): On the night of Thursday, July 16, 1964, two officers of the Roanoke Rapids Police Department came to my house about twenty minutes before four A.M. I looked up at the clock. They said they had picked up Charles. I said, "Where?" He said, "Over in the park." I said, "For what?" He said, "Peeping Tom," and that they were holding him for something else. He said he didn't know what right then. I said, "I might as well go to the station." He said, "No need for you to go. They won't let you see him." They said they picked him up at 10:30.

I saw my son the last time at home eating supper. He took a bath, put on clean clothes and looked at TV a while. I don't know exactly what time he went out. I did not go to Halifax County jail to see my son while he was there. When I said I would go to the police station, the officer said there was no need to go. After it got light, we went to the lawyer's office. We wanted to see Mr. Richard Allsbrook, but he wasn't there. His mother was in the hospital, and we talked to Mr. Cranford.

I did not go down to the Halifax County jail to see my son while he was there, because I was expecting to go to the hospital. I went to the hospital on July 21, and had a baby. I sent my daughter Doris Jean to go to the jail. I remember being in one of the rooms adjacent to the courtroom at the time of Charles' trial. Before they brought Charles up, Mr. Cranford talked with us and told Charles the best thing to do was to go on and confess. I asked him if he could get an appeal. He said if he got an appeal he would get the "chair" and said the best thing to do was to confess. He went down and had the paper typed up and came back, and we read it. I said, "Can we get an appeal?" He said, "He will get the chair if he does." He said the best thing was to sign the paper. I think Charles signed it first and then I signed it. He went and got two other people to come in and sign the paper. They didn't say anything but just signed it. He said, "Let me get two witnesses," and he brought them in.

CROSS EXAMINATION

The police said there was no need to go to the Roanoke Rapids police station jail. After we talked to Mr. Cranford, he called the jail, and they said they were fixing to take him to Halifax. After that, I went to the hospital. I stayed in the hospital two or three nights. I didn't go to the jail from the 24th or 25th of July until August 12th because I don't get out too early with a young baby. My baby was almost a month old when I came to the court. I sent my daughter to the jail. I sent my son food, clean clothes, and a little bit of change. My boy was fifteen years old. I told the Judge how old he was. They had on the paper that he was sixteen, but I told them he was fifteen. Mr. Cranford said, "Let me change this," and he drew a line over the sixteen and put fifteen on the top.

The night they picked Charles up, everybody was home except Charles. He was sleeping on the front. Charles and Allen were together; Allen was there and I thought Charles was too. When Allen came in, I asked him where

Charles was, and he said, "Out there." I thought he was home at four o'clock in the morning.

MR. BURGWYN: All through this trial at that time, you were completely satisfied with Mr. Cranford's representation of your son?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION # 31.

WITNESS: I didn't know anything. I wasn't satisfied, but there was nothing I could do and if I could have gotten out and got a lawyer, I wouldn't have had Mr. Cranford. I would have hired someone else. I did hire him. The Judge didn't ask me anything except that if I was Charles' mother. I don't remember the Judge asking if his father was living. Charles' father was working; I remember Mr. Cranford asking me that. I don't remember the Judge asking me anything except whether I was Charles' mother. I told the trtuh, and I did not try to hide it. If the Judge asked me where Charles' father was, I don't remember it.

MR. BURGWYN: After the case was over and your son was in prison, I ask you if you haven't talked to Sheriff Daniels on one or two occasions, and told him how happy you were that things turned out as they did?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION # 32.

WITNESS: No, sir. Charles was sentenced on Tuesday like of this past week and the following Monday I was downtown. I had been to Mr. Cranford's office to pay him what little money I had. I came back and stopped at Star Furniture Company. I was standing there and Mr. Daniels passed me and didn't speak and went on and then came back and talked to me about fifteen minutes. He asked me how Charles was and thought he would get a good education. He said Charles was a good boy and just got with the wrong crowd. He said that he was glad he was getting on all right. I said I hoped he would be all right. He said he could go to college. I did not say to the Chief of Police that I was dissatis-

fied with Mr. Cranford. Nobody has asked me whether I was dissatisfied or pleased with anything that happened in this court. I did not feel that Charles got justice. Nobody asked me. I have not been to anybody and complain. I have not been to you as the Solicitor, or to Judge Hubbard, the trial Judge. I did not write Mr. Cranford and tell him I was not happy. Charles told told Mr. Cranford that he hadn't done anything for him in that little room, and I said, "Charles, don't say that." And he began crying. I didn't want Charles to talk to him like that. I did not hear those lawyers who came in and witnessed my son's plea of guilty ask him anything. I signed the guilty plea because I didn't know any better. Mr. Cranford said it would be better if we did sign the guilty plea. I asked him if we could appeal and he said no, that if he got an appeal he would go to the chair and I thought it would save his life, and I hope to get him a parole, and when I asked about appeal, he said, "He will get the chair." I did see Sheriff Daniels in front of Moody Hedgepeth's store in Roanoke Rapids and said, "Sheriff Daniels, the next time you are in Raleigh, I hope you will go by and see Charles." And I asked the Sheriff to tell him to behave himself and be a good boy because we want to try to get him out as quick as we can and if he doesn't stay too long it will be the best thing that ever happened to him.

MR. BURGWYN: I ask you if your son didn't tell you in the presence of Mr. Cranford that he had been to this house on this night in question, had intercourse with this woman he didn't know and went in against her will?

MR. SMITH: Objection.

EXCEPTIONS 33 and 34.

WITNESS: He didn't say against her will. Mr. Cranford asked him if he had ever been there, and he said yes. I said, "It is hard for me to believe Charles went in there because he don't pay no girls any mind and it is hard to believe that."

FRANK D. WILSON (sworn) testified for petitioner as follows:

I am the Register of Deeds of Halifax County. The jury list is typed in my office. The jury has been up to now selected by the County Board of Commissioners, of which I am the Clerk. I am familiar with the way the grand jury is selected; it is selected in the Clerk's Office from the list drawn by the County Commissioners.

COURT: The Court will take judicial notice that all grand juries in the first division of the Superior Court of North Carolina over, through and which this presiding officer has been traveling for fifteen years have always and invariably been selected in open court from the jurors drawn at the appropriate time by the placing of all names in a hat and the grand juries are drawn out by a child under ten years of age, seated in the box, duly sworn, empaneled and charged by the presiding officer, and this presiding officer has never, during the fifteen years he has been serving on the Superior Court bench of North Carolina, known a grand jury to be selected in any other manner.

WITNESS (continuing): I am familiar with the manner in which the jury lists are prepared. These lists are used both for grand and trial juries. As to the manner in which the lists were prepared that go into the jury box, during the summer of 1964, the commissioners, who are elected from districts, were taking the tax records of those districts and checking the names according to the General Statutes of North Carolina, selecting men known to them to be of moral character, never convicted of a crime and of sufficient intelligence to serve on either the grand jury or the petit jury. They selected the names from the tax rolls. My office types those names on which they have made a distinctive mark on the tax scroll. These are typed in duplicate. One copy is cut in little strips and put in the jury box; the other showing the number and township goes in a book. In 1964 these tax lists were kept on a segregated list in each township, white and colored. The little distinctive marks made on each page of the tax roll indicating people selected by the Commissioners to serve on the jury remain on the

tax roll indefinitely. The grounds on which the Commissioners made their determination was personal knowledge of the individuals to be selected.

MR. SMITH: Although they knew they would reject those who—

MR. BURGWYN: Objection.

COURT: Your only duty is to copy the names they designate?

WITNESS: That's right. I will say every two years when the jury box was filled the County Commissioners published a copy of the General Statutes with the procedure set out and that to be used. They had to be of sufficient intelligence to serve on a jury.

COURT: Objection is sustained, unless the witness knows what the Commissioners did.

MR. SMITH: Do you know what the Commissioners did?

WITNESS: I don't know exactly.

COURT: If he knows what the Commissioners were thinking about.

MR. SMITH: What are the statutory methods that the Commissioners followed?

WITNESS: The General Statutes of North Carolina.

MR. SMITH: What is your understanding of the procedure they used based on the statute?

MR. BURGWYN: Objection.

COURT: Sustained.

MR. SMITH: Is one of the procedures that the Jury Commissioners use, to ask acquaintances of theirs, or friends of theirs, who they knew among the names?

WITNESS: I don't think that is correct. The County Commissioners have on occasions asked deputy sheriffs or the tax collectors, who know more people than they do, as to their qualifications for jury duty.

MR. SMITH: These practices you describe, would they persist over the five- or six-year period before 1964 —from 1960 to 1964?

WITNESS: Yes.

MR. SMITH: You know when the recent addition to the courthouse was constructed?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: It has been in the last couple of years.

COURT: It went in use sometime after 1963.

WITNESS: Before that time there were very few women who sat on jury duty, because there were no toilet facilities available in the courthouse.

MR. SMITH: The County has recently revised this jury roll?

WITNESS: Yes, within the last year.

MR. BURGWYN: Objection.

THE STATE: Sustained.

EXCEPTION # 35.

MR. SMITH: Describe the manner in which this jury selection procedure was changed. Did the jury roll process change after 1964?

MR. BURGWYN: Objection.

COURT: You said it was the same system from 1960 to 1964. He wants to know if there are any changes, or did it remain the same until 1967?

WITNESS: Yes, it has changed. The last selection of jury was entirely mechanical. That is, they didn't use the tax scrolls. They used the voter registration books, the ones that voted in the last preceding general election and every fifth and sixth name was listed.

COURT: Was that done under the law passed at the last Legislature? The reason I ask is it is very similar to the present provision for selecting a jury as advocated by the department of administration.

WITNESS: It was done by recommendation of the Attorney General.

MR. SMITH: It was recommended on February 14, 1967.

WITNESS: Yes, sir.

MR. BURGWYN: Objection and motion to strike.

COURT: Sustained, and motion to strike allowed.

MR. SMITH: You know how many people serve at a time on grand juries in Halifax County?

MR. BURGWYN: Objection.

COURT: Sustained. Eighteen serve at a time.

MR. SMITH: Will the Court take judicial notice that nine new members are selected each six months?

COURT: That is true. All counties in the eastern part of the State don't do that. If I make no mistake, one or two small counties, where they have only one criminal term in the spring season and one in the fall, they select a new grand jury at each criminal term.

MR. BURGWYN: What we want is for you or somebody under you to prepare a list of everybody drawn on petit juries from 1960 through August Court, 1964.

WITNESS: Wouldn't the whole jury list give you that information?

MR. BURGWYN: That is what we want, but we want it by race.

MR. WILSON: There is no way of telling from the jury list.

MR. BURGWYN: Somebody will have to look it up. It will show from the tax books for the year they were drawn. It will take time, but I imagine it will be done.

STIPULATION BETWEEN THE SOLICITOR FOR THE STATE AND THE COUNSEL FOR THE PETITIONER: The United States census for Halifax County for the year 1960 can be introduced in evidence by stipulation, and in regard to the percentage of the races in Halifax County on said date it is also stipulated that for the year 1960 tax levy Halifax County showed approximately 11,000 whites and approximately 7,000 colored, and the 1964 tax levy shows substantially 11,000 whites, 7,000 Negroes, and 129 other.

MISS DORIS JEAN USSERY (sworn) testified for petitioner as follows:

I am a sister of the petitioner. While my brother was in Halifax County jail during the latter part of July or early part of August, 1964, I attempted to visit him. I did so on more than one occasion. The first time I came here to visit him was on Thursday, and I went inside. I think Mrs. White let us inside. I asked if I could see

Charles Parker. She told me I could not. The first time I came down here, Mrs. White wasn't in. A colored lady was working at the desk and asked me what I wanted. I said I wanted to see Charles Parker. She said nobody was there to let me see him, and I would have to go to the Sheriff. I did go to the Sheriff's office, but the Sheriff was not there, and a lady working there, a secretary I reckon, said she wanted to pass a couple of words about why I wanted to see him and who I was. Every time I came to see him, I brought some money or clothes and left these things with somebody at the jail.

I live in Roanoke Rapids. On the second time I came to see him, it was on a Sunday. Some of Charles' friends brought me down here and hoped that they could see him also. The jailer, or Mrs. Whitehead, or whoever she is, was sitting on the lawn in front of the jail on a chaise lounge with shorts and a halter on. I asked if I could see him. She said it was too late, that the hours for visiting were over. I told her that I had money and food for him, and she told me to go inside and put it on the desk.

I tried to see him a third time, but every time I came I was too late or it wasn't visiting day. I did call down in advance, and asked what time visiting hours were, and they told me the visiting hours were from 1:00 to 4:00. I don't know who I talked to, but it was a lady's voice. I called to the County jail, and talked to somebody who answered the County jail phone. It was that person who told me the visiting hours were from 1:00 to 4:00. And I did come down during that time. I was told that I was too late or that it wasn't visiting day. Every time I came it was before 4 o'clock. The only other members of petitioner's family who came with me on these occasions was my little sister.

CROSS EXAMINATION

The Sheriff or Jailer told me the only visiting hours were on Thursday. I did come on Thursday, the second Thursday in the month of August, if I am not mistaken. That was not after he was tried. I also came down here

on the Thursday right after they had brought him down to the jail. They told me it was a visiting Thursday. I don't know whether it was the second Thursday and every Sunday that was visiting day. I came down here on Sunday. I did not see him. I don't know exactly what time I got here, but I know it wasn't after 4 o'clock. I always left home at two or a little after two and it didn't take long to drive down here. I never went in after four. My father did not come down here.

MR. BURGWYN: Did your father ever attempt to visit his son?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION # 36.

WITNESS: My father was working. At that time I was pregnant and was not working. Friends brought me down here. We did not ride around all afternoon; we would come straight down here.

COURT: The Court adjourns the taking of evidence in this action until ten o'clock Tuesday morning, December 19, 1967, for the primary purpose, among others, to allow the petitioner to secure certain information from the office of the Register of Deeds and the tax office of Halifax County, which is not available at this time.

The hearing of the case was resumed on Tuesday morning, December 19, 1967, at 10:00 o'clock, at which time the following proceedings were had.

MRS. VIOLA PARKER (RECALLED) testified for petitioner, as follows:

I remember the birth certificate which was introduced as Petitioner's Exhibit 1 the last time.

MR. SMITH: You testified you secured that from the Register of Deeds Office. The petitioner's name is Charles Parker. The name on the birth certificate was

Charles Ussery. Is there any explanation for the difference in his name and the name on the birth certificate?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: He is going on his father's name now. The name "Ussery" is my maiden name.

MR. SMITH: This child was born prior to your marriage?

MR. BURGWYN: Objection.

COURT: OVERRULED.

WITNESS: Yes, that's right.

FRANK D. WILSON (RECALLED) testified for the petitioner as follows:

Since the previous hearing in this case, I have performed certain examinations of the records of juries in this county. We checked all the jurors that have been drawn by the Board of County Commissioners during this period, and they total two thousand nine hundred and fifty-four.

MR. BURGWYN: Objection.

COURT: Overruled. That is over what dates?

WITNESS: January, 1960, through August, 1964. The total number of jurors on all venires was 2,954.

MR. SMITH: Did you determine what the respective races were?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: To the best of my ability, yes. Of the white race there were 2,820.

MR. SMITH: How many did you find to be colored?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: 134 were colored.

MR. SMITH: Were those colored all Negroes?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: I imagine so. I don't know.

MR. SMITH: Do you have any kind of listing you made which contains this information?

MR. BURGWYN: Objection.

COURT: He has testified as to white and colored.

MR. SMITH: He has a sheet of paper which shows the number of each of these drawings.

MR. BURGWYN: Objection.

COURT: You want the number of whites and the number of colored?

MR. SMITH: Yes, sir. He has a list which shows by venire and we think it should go in the record.

COURT: Objection is sustained. If you want the one for this particular term of court, August, 1964,—was he indicted at the August Term, 1964?

MR. SMITH: Yes, sir.

COURT: I will allow him to state that it is from the petit jury because the grand jury was taken from the petit jury and the first criminal court after July 1 the Court takes judicial knowledge that they select nine each six months.

WITNESS: I have them as they were selected for the Grand Jury in August, 1964. You want the number of whites drawn for the August Term, 1964, petit jury?

MR. SMITH: Have you checked on the composition of the Grand Jury of August, 1964?

MR. BURGWYN: Objection.

COURT: Overruled.

WITNESS: Yes. Nine were drawn, eight white and one colored.

MR. SMITH: Did you also check on all the grand juries drawn during the period January, 1960, through August, 1964?

WITNESS: 99 were drawn during the period. 91 were white and 8 were colored.

CROSS EXAMINATION

No names drawn from the jury box were discarded because of race. There was nothing on the list that came from the jury box to indicate race. The only thing on the slip in the jury box is the name and number.

MR. BURGWYN: You know how these names were selected to go in the jury box?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: They are selected by the County Commissioners. The list as drawn by the County Commissioners were typed in duplicate, one of which was cut in strips showing only the number and the name, and the other one shows the township from which they come. They were selected by the County Board of Commissioners to go into the jury box.

MR. BURGWYN: Do you know from what source they come?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: They come from the tax records. I was present at the time the names were selected.

MR. BURGWYN: Were any names kept off the jury list because of race?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: No names were kept off the jury list because of race. I think the Commissioners are very conscientious about selecting. The law says they shall select men of good moral character, or persons of good moral character, who have never been convicted of crime involving moral turpitude and are of sufficient intelligence to serve on a petit or grand jury, and they had to select people they knew. I think the Commissioners have been very conscientious.

REDIRECT EXAMINATION

All these Commissioners were white people. They naturally would know more white people and know more about the white people in the community than they would Negroes. I think that many Negroes were left off the list because the Commissioners didn't know anything about them, didn't know whether they were fit to serve or not.

RECROSS EXAMINATION

Also numerous white people were left off. These Commissioners were duly elected by the people of Halifax County under the election law.

STIPULATION BY THE SOLICITOR FOR THE STATE AND THE COUNSEL FOR THE PETITIONER: The signed stipulation based on the contents of the records of the 1960 Census of Halifax County may be introduced in evidence as Petitioner's Exhibit 2.

HUBERT M. BLALOCK, JR. (sworn) testified for petitioner as follows:

I live in Chapel Hill. I am employed by the University of North Carolina in the Sociology Department as a teacher of statistics. I have an AB degree from Dartmouth, an MA degree from Brown University, and a Ph.D. degree from the University of North Carolina.

MR. SMITH: What are these degrees in?

MR. BURGWYN: Objection.

COURT: Mr. Smith, what is the purpose of calling this witness?

MR. SMITH: The petitioner has called this witness for the purpose of having him qualify as an expert in statistics, and have him testify as to the statistical probabilities of arriving at a racial distribution of grand jurors in Halifax County on a random or other unbiased basis, which is identical to the actual racial distribution of grand jurors during the term of court at which the petitioner was indicted and for all of the grand juries impaneled during the period from January 1960 to the time of the petitioner's indictment, and also this distribution for all jury lists drawn by the Jury Commissioners during this period.

COURT: This kind of testimony is not competent. I will sustain the Solicitor's objection. Testimony of prob-

abilities has no place in a co urtroom. When you talk about probabilities, you are tal king about gambling. This man is a gambler. He might as well go to Las Vegas and make his living there.

MR. SMITH: The petition er requests leave of the Court to place the testimony of the witness on record, so that it can be preserved for appeal.

COURT: I will deny that request. You may prepare an affidavit of his testimony, and if it is satisfactory to me, I will allow it to be place d in the record.

EXCEPTIONS 37 and 38.

MR. SMITH: The petition er offers as evidence PE-TITIONER'S EXHIBIT 3, which is an abstract of the records of the Central Priso n Hospital pertaining to petitioner, signed by the assis stant medical director.

COURT: Allowed

MR. DWIGHT L. CRANF ORD addressed the Court as follows:

My name is Dwight L. Cr anford. I represented the petitioner at the August Ter m, 1964. I am present in Court and have my file with me and would like to tender myself to the petitioner's at torney for examination or cross-examination. I have not been subpoenaed.

MR. SMITH: I don't care to examine Mr. Cranford on direct examination.

PETITIONER RESTS.

STATE'S E VIDENCE

DWIGHT L. CRANFORD (sworn) testified for the State as follows:

I am an attorney. I went to undergraduate school at the University of North Caro lina, finishing in 1954, and

went to law school at the University of North Carolina, finishing in 1960. I have been practicing in Roanoke Rapids since Labor Day, 1960. I represented Charles Lee Parker in 1964 on a charge of first-degree burglary. I was employed by his mother and father the morning after he was arrested in July, 1964. I talked to Charles Lee Parker the same morning I talked to his mother and father. I went to the police station and talked to him. That was the morning after he was arrested the night before. I talked to Mr. Reuben Daniels, Chief of Police of Roanoke Rapids, by telephone while Charles Parker's mother and father were in my office. I don't remember whether I told Mr. Daniels that his mother and father requested me to represent him. He called to see if I would represent him. I understood the Chief knew they were in my office.

MR. BURGWYN: At the time the mother and father talked to you, did either the mother or father complain to you of any treatment their son had received the night before?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION #39.

WITNESS: I don't recall specifically. They told me the boy had been arrested and they understood he was charged with being a Peeping Tom. Of course, at that time they didn't know a great deal about it. I went and talked to Charles Lee Parker in the municipal building in Roanoke Rapids. No one else was present when I talked to him.

MR. BURGWYN: Will you relate to the Court the gist of that conversation?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: I talked to Charles about what he was charged with and I didn't go in great detail. At that time, he was not technically charged, but they said he would be charged with first-degree burglary. He told me he had made a confession to the police officer. I can't say whether he told me that they had advised him of his rights. I questioned him primarily at to whether or not

he was threatened in any manner, whether any promises were made to him and whether he was scared at the time he made the statement. He told me no threats had been made and no promises had been made, and he said he was not scared. That was before the MIRANDA decision. I tried to find out what we were faced with in a hurry. He was later placed in the Halifax County jail. I went to the Halifax County jail to discuss the case further with him.

MR. BURGWYN: Did you discuss all the possibilities of his case with him?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: I can't say that I can answer that. I talked with him primarily on the basis of what he had told me about the situation, what he had told the police officers and what the possible consequences were and all the avenues of handling the case. After discussing with him and his mother, he asked me to plead him guilty. His mother was present on the 17th and 18th of August.

COURT: Do you recall approximately how many times you visited him after he was brought to Halifax County jail?

WITNESS: I don't recall specifically. Not more than once or twice.

COURT: That was prior to the 17th and 18th of August?

WITNESS: Yes, sir. I spent most of the day of the 17th and 18th of August in one of those side rooms with him and his mother. He and his mother requested that I plead him guilty. I had an affidavit signed by his mother. I have the original, which is as follows:

> "I, Viola Parker, mother of Charles Lee Parker, do hereby state that I know and understand the nature and seriousness of the charge of first degree burglary which is now pending against my son, Charles Lee Parker. I have talked with Dwight L. Cranford, my son's attorney, and he has talked with my husband who is not present at this term of court. I have also talked with my son about this whole matter. After full discussion and consideration I hereby

consent to my son pleading guilty to the charge of first degree burglary and I understand that in case of such plea my son will be sentenced to life imprisonment.

This the 18 day of August, 1964.

(Signed) Viola Parker"

Charles Lee Parker was present when his mother signed the affidavit. It was right after he had signed his statement. His statement was as follows:

"I, Charles Lee Parker, age fifteen, do hereby state that I am aware that I am presently charged with first degree burglary and will probably be tried at the August, 1964, term of Superior Court of Halifax County. My attorney Dwight L. Cranford has explained to me the nature and seriousness of this charge. I know this is a capital case. I also know that if I plead guilty I will be sentenced to life imprisonment. I have not been threatened or abused in any manner by any person and no promises have been made to me if I plead guilty to any charge. My lawyer has discussed this matter with me and with my mother and I understand he has discussed it with my father. After discussing the matter with my attorney and after consideration I hereby authorize, direct and request him to enter a plea of guilty to first degree burglary on my behalf at the August Term, 1964, of Halifax County Superior Court, realizing that I will be sentenced to life imprisonment.

This 18 day of August, 1964.

(Signed) Charles Lee Parker"

Then we came into Court and he pleaded guilty. His plea was accepted by the State. He was sentenced to life imprisonment.

MR. BURGWYN: At that time, had you been paid your full fee?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION #40.

WITNESS: Not the entire amount.
MR. BURGWYN: Did you at a later date receive a letter from Charles Lee Parker in prison?
MR. SMITH: Objection.
COURT: Overruled.

EXCEPTION #41.

WITNESS: I did.
MR. BURGWYN: Read the letter.
MR. SMITH: Objection.
COURT: Overruled.

EXCEPTION #42.

WITNESS: This is on prison stationery, and it is as follows:

"Dear Mr. Cranford:

I received a letter from my mother and she told me what you say. What I plan on following all the rules they place before me but in a way I am glad the place me in prison because I was going to quit school and I know I would have got in some trouble. It's not all bad here. I get a chance to finish school. I suppose to go to Polk Youth's Center and I can take a trade and I am very sorry I caused you all the trouble at the trial. Oh they say be in Raleigh a while. I suppose to see a nut doctor. They think I am crazy. Well I want to thank you for all you did for me.

(Signed) Charles Lee Parker"

This letter was dated about two weeks after he was tried. I never saw his father after the trial as I recall. I talked to his mother between the trial and when I got that letter. At that time I suppose I did most of the talking; I told her to encourage Charles to make the best of prison and to try to go to school and I thought he would be out before he was 30.
MR. BURGWYN: Did she complain to you about your representation or handling of the case?
MR. SMITH: Objection.
COURT: Overruled.

EXCEPTION #43.

WITNESS: She did not. She thanked me.
MR. BURGWYN: Did she finish paying you your fee?
MR. SMITH: Objection.
COURT: Overruled.

EXCEPTION #44.

WITNESS: She paid me some more on it but never completed paying it. She did pay through November. I know of nothing else I want to tell the Court. I explained to the petitioner fully of the crime with which he was charged and the consequences thereof. In my opinion he fully understood what was explained by me, in the presence of his mother.

MR. BURGWYN: The State offers in evidence as State's Exhibit 1, the statement of Viola Parker, as State's Exhibit 2, the statement of Charles Lee Parker, and, as State's Exhibit 3, the letter from Charles Lee Parker to Dwight L. Cranford.

COURT: Allowed.

EXCEPTION #45.

WITNESS (continuing): After he pleaded guilty His Honor asked him some questions. At the arraignment, when they said, "How will you be tried?" I had to say, "By God and my Country," because he had no way of knowing how to answer that question.

CROSS EXAMINATION

I advised the petitioner that if he didn't want to plead guilty he should tell me before we came out to the courtroom because the Judge was going to ask him if it was his decision, and, if it was not, for him to tell me that it was not. I did not discuss the series of questions with him that the Judge would put to him. There was some confusion as to whether the defendant was fifteen or sixteen years of age. The affidavit I prepared said he was fifteen; that is what he told me. I don't recall attempting to correct some of the court records and suggesting that sixteen be marked out and fifteen put in its place. I don't know what time he was sentenced on the guilty plea. I don't remember whether it was before or after lunch.

I remember talking with the petitioner in July and informing him that court would be the next week and his mother would be here the next week and his father, I thought, and we would have an opportunity to get together before his trial. I don't have a time record that would reflect when I came. I don't keep time records except on insurance cases. I remember that I talked to the defendant at the Roanoke Rapids Police Station between 9:30 and 10:30, because I left my office immediately after I finished talking to his mother and father, and they were waiting in the office when I got there that morning.

In his letter the defendant, when he apologized for all the trouble he had caused at the trial, was referring to the time just after the sentence when we went in that side room, he and I and his mother, and another lady who was related to him. I talked to him briefly about the sentence and then gave his mother and the other lady an opportunity to say good bye to him. They became emotional. Charles was trying to keep them from being emotional. Charles started to the door to go into the courtroom. He was about to break down and his mother and the other lady stepped in front of him to prolong the good-bye. He wheeled around towards the other side of the room. I was afraid of what he would do and I called the Deputy Sheriff to come, and he and another man came and brought him back in the courtroom.

I explained to him that in the event he was convicted in a jury trial, he would receive the death sentence unless the jury recommended mercy. I told him that by pleading guilty he would get a lighter sentence. I advised him that to plead guilty was the better of the two courses to take. But I don't advise him that that was the only course; I told him the choice was his and his family's.

I don't specifically recall that I discussed with him at all whether or not the law would permit me to keep his confession out of the evidence. It was my general practice then—practice has changed since the MIRANDA decision—to tell any defendant who confessed that there was a possibility of keeping the statement out. I did know that if we didn't keep it out, he was sunk. The

ESCOBEDO decision was decided at the June Term, 1964, but whether I had read it at that time I don't know.

I did not discuss with the defendant the racial make-up of the grand juries in Halifax County. I did not discuss with him the possibility of quashing the bill of indictment; in the light of what he told me and the officers, I didn't see that it would serve any purpose.

REDIRECT EXAMINATION

I knew that he was caught on the front porch of the house. He told me he was on the front poor. The officers say he had his hand on the door. I understood that he was caught at the house he was accused of breaking in.

COURT: Was it your understanding that he was caught at the house subsequent to the time he was accused of breaking and entering and, I believe, rape?

WITNESS: Yes, sir, several days later.

MR. BURGWYN: That was the same house he had broken in before?

MR. SMITH: Objection.

EXCEPTIONS 46 and 47.

WITNESS: That was my understanding. I don't recall if that is what he told me.

CLARLIE D. CLARK, JR. (sworn) testified for the State as follows:

I am an attorney in Roanoke Rapids, N. C. I finished law school in 1953. I actually started practicing law in Halifax County in 1956. I witnessed the signature of Charles Lee Parker on a statement he made authorizing Mr. Cranford to plead him guilty of burglary in the first degree. I did not witness a conversation between Mr. Cranford and the defendant. I had a conversation with him myself. His mother was present.

MR. BURGWYN: What was it?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: Mr. Cranford came out of the room and asked me to witness the signature of Charles Lee Parker. I went in the room. I am not sure whether Mr. Cranford asked him any questions after I arrived, but I know I did. I wanted to be absolutely certain this boy knew what he was doing and the consequences of his act. For that reason I inquired of him, and I don't recall the specific questions, but did he know what he was doing and that it would give him life imprisonment and his answers were in the affirmative. His mother was in the room. I don't recall whether I asked her any questions, but I do know the whoam who I understood was his mother was present. He did sign it, and acknowledged his signature in my presence. Neither he nor his mother complained of any treatment he had in Court or before the trial.

CROSS EXAMINATION

There was no trial; this conversation with him was before the entering of the plea of guilty. No one asked me to ask those questions to the defendant. I did this just as a member of the Bar. I feel that any time a defendant has authorized his attorney to enter such a plea, the defendant should be aware of what the situation is. I know Mr. Cranford to be an excellent attorney and I know there are occasions when the defendant will come back and attack the attorney, and I asked such questions on my own.

MR. SMITH: There was no suggestion in this proceeding that Mr. Cranford was an incompetent attorney, was there?

WITNESS: I haven't read the petition. I did not discuss with the defendant any confession he had made to the police. I did not discuss with the defendant the constitution of the grand juries of Halifax County.

REUBEN DANIELS (sworn) testified for the State as follows:

My name is J. R. Daniels. I am Sheriff of Halifax County. In July, 1964, I was Chief of Police of the City

of Roanoke Rapids. At that time, Charles Lee Parker was arrested and placed in my jail.

MR. BURGWYN: At that time that he was in your custody or under your supervision, and up until the time he plead guilty in Halifax County Superior Court, did Charles Lee Parker, his mother, Viola Parker, or any member of their family, complain to you about any treatment Charles Lee Parker received after he was arrested?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION #48.

WITNESS: No, sir. I have talked to his mother since he was tried. I have not talked to the defendant after he was tried.

MR. BURGWYN: In your conversation with his mother, after he plead guilty, did she complain about any treatment?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION #49.

WITNESS: No, sir.

MR. BURGWYN: Did she make any statement to you?

MR. SMITH: Objection.

COURT: Overruled.

EXCEPTION #50.

WITNESS: Viola has talked to me three times to my knowledge that I would see her on the street, about Charles Lee, and each time she has told me how well he was getting along in prison and I believe at one time she told me he was going to school regular and was a member of the boxing team and got along real good and, if it weren't for the fact that he would have to stay away so long, it was the best thing that ever happened to him. I said, "There is a probability if he behaves himself, he won't have to stay away too long." She asked me if I ever went to the camp where he was, to stop and talk to him, and I told her I would.

MR. BURGWYN: Was this defendant caught in the act of the crime he was charged with?

MR. SMITH: Objection.
COURT: Overruled.

EXCEPTION #51.

WITNESS: No, sir.
MR. BURGWYN: Was he caught at the house that he had previously broken in or was charged with?
MR. SMITH: Objection.
COURT: Overruled.

EXCEPTION #52.

WITNESS: The same house, yes, sir.
MR. BURGWYN: Was he caught by a police officer?
WITNESS: Yes, sir.

CROSS EXAMINATION

I did not participate in the interrogation of the defendant.

EVIDENCE CLOSED.

IN THE SUPERIOR COURT OF HALIFAX COUNTY

[Title Omitted in Printing]

STIPULATION

IT IS STIPULATED by and between the petitioner and the State of North Carolina that the following population characteristics of Halifax County are derived correctly from the 1960 Census, from sources printed in Tables 27 and 28 of the U. S. Bureau of the Census, THE U. S. CENSUS POPULATION: 1960, GENERAL POPULATION CHARACTERISTICS, NORTH CAROLINA, Final Report PC (1) B, U. S. Government Printing Office, Washington, D. C., 1961:

Categories	Numbers	% Total by Race
White Male	12,845	44.7%
Negro Male	15,869	55.3%
White Female	13,647	45.9%
Negro Female	16,057	54.1%
Total White	26,492	45.3%
Total Negro	31,926	54.7%
White Male 21 and over	7,846	53.9%
Nonwhite *Male 21 and over	6,710	46.1%
White Female 21 and over	8,650	55.1%
Nonwhite *Female 21 and over	7,056	44.9%
Total White 21 and over	16,496	54.5%
Total nonwhite* 21 and over	13,766	45.5%

*Nonwhite are Negro, except for 274 Indian (assuming 51% of the 537 Indians in the county are 21 years old and over, as is true of the general population) and 1 Japanese. Thus Negroes represent 98% of the nonwhite figures.

/s/ NORMAN B. SMITH
Attorney for Petitioner.

/s/ W. H. S. BURGWYN, JR.
Solicitor of Third
Solicitorial District.

PETITIONER'S EXHIBIT 3

ABSTRACT OF RECORDS
CENTRAL PRISON HOSPITAL ON

PATIENT: Charles Lee Parker
NUMBER: 20449-42
DATE: 15 Dec 67
RACE: Colored
SENTENCE: Life
HOSPITAL NO: .....
WORK RATING: .....

As Requested by: Norman B. Smith, Attorney-at-Law, Suite 700, Greensboro, N. C.

COMPLETE—PARTIAL MEDICAL RESUME

Review of this patient's medical folder indicate no significant medical treatment except fitting for glasses, one dental appointment, and normal chest X-ray.

Psychiatric examination performed by Dr. J. F. Owen, September 10, 1964, and August 31, 1964, are summarized as follows:

On September 3, 1964, psychological studies were done in the case of this patient and these studies revealed the fact that he has a full scale IQ of 104 and a total achievement level of 5.1. Patient, therefore, functions at a normal level of intelligence, but his retention of school knowledge does not compare very favorably with his advantages.

The MMPI results are as follows: 'The profile is moderately sociopathic. There are no signs of anxiety. The patient apparently has no feelings of guilt or remorse over his behavior. There are no indications of sexual disorder. His development in this area appears to be within the normal range for a boy of his age. The schizophrenic sub-scale not associated with psychosis imply an uninhibited individual who makes little effort at controls. The reading on the prison adjustment scales underscore this contention as they imply that the patient could be easily swayed into behavior which would be in conflict

with institutional controls. There certainly are no moral inhibitions which would prevent the patient from becoming involved in any direct behavior pattern that presented itself as a means of securing his immediate goals. There are no signs of psychosis."

The examination of September 10, 1964, "It seems to this examiner that we are here concerned with a person who is a social rather than antisocial. He obviously has no inner restrictions or controls to prevent antisocial and criminal behavior. Being limited, he responds only to external controls. He is lacking in ideals and principles and appreciation for social needs. It seems that his ambition is dependent entirely upon the pattern which he develops to satisfy his needs and desires, irrespective of the consequences. One of the most distressing manifestations shown by this youth is the lack of the powers of inhibition. This would lead one to feel that he is likely to enter into activities quite impulsively even if it required aggressiveness to accomplish his purpose.

DIAGNOSIS: PERSONALITY PATTERN DISTURBANCE, INADEQUATE PERSONALITY.

These excerpts of this patient's records are taken by Dr. Eugene Ruble, MD, from a report by Dr. J. F. Owen, MD, Psychiatrist.

EUGENE RUBLE, MD
Assistant Medical Director

IN THE SUPERIOR COURT OF HALIFAX COUNTY

[Title Omitted in Printing]

STIPULATION OF COUNSEL

IT IS STIPULATED AND AGREED by and between the counsel for the petitioner and the Solicitor that State's Exhibits 1, 2, and 3 shall not be attached to the case on writ of certiorari, because they were read verbatim into the record and were brought forward verbatim into the narrative part of the case on writ of certiorari.

IT IS FURTHER STIPULATED AND AGREED by and between the counsel for the petitioner and the Solicitor that petitioner's Exhibit 1, which was admitted into evidence, is identical to Exhibit 1 attached to the petition to review criminal proceedings.

This 15th day of February, 1968.

/s/ NORMAN B. SMITH
Attorney for Petitioner.

/s/ W. H. S. BURGWYN, JR.
Solicitor.

IN THE
COURT OF APPEALS OF NORTH CAROLINA

[Title Omitted in Printing]

ASSIGNMENTS OF ERROR

1. The Superior Court committed prejudicial and reversible error in making the following findings of fact in its Order:

> Petitioner defendant was arrested at approximately 9:30 to 11:00 o'clock P.M. on July 16, 1964, while burglarizing, or attempting to burglarize the home of Mr. and Mrs. Silas M. Rowland, in the City of Roanoke Rapids, Halifax County, North Carolina, it being the identical home that he had a few nights previously burglarized and raped the female occupant;
>
> * * * *
>
> that said petitioner defendant freely admitted to his attorney his guilt of the crime with which he was charged, in fact said petitioner defendant, Charles Lee Parker, upon cross examination at this hearing, and the Court so finds as a fact, has freely admitted his guilt of the capital offense of burglary and rape; however, said defendant has not at this date been indicted nor placed on trial for the capital offense of rape;
>
> * * * *
>
> that no particular statement has been made at these hearings denying the truthfulness of the petitioner defendant's plea and guilt of the offense charged. To the contrary the petitioner defendant in person and from the witness stand under oath has admitted on cross examination the truth of the charge.

These findings of fact are erroneous because they do not pertain to any issues or questions of fact properly before the Court in a post-conviction hearing, and because they are based entirely upon evidence which is incompetent in a post-conviction proceeding. To the foregoing assignment

of error, petitioner's EXCEPTIONS 53, 54 and 58 (R pp 28, 29, 30) are directed.

2. The Superior Court committed prejudicial and reversible error in making the following finding of fact:

> that the petitioner defendant has stated at this hearing that he was content with his plea and sentence and completely satisfied with the effort of his attorney, the Honorable Dwight Cranford until some few months after incarceration when he learned that other persons had been sentenced to five to six years for the same crime with which he was charged, which statement as to a sentence of five to six years for the identical crime charged against petitioner defendant, Charles Lee Parker, is erroneous in law and false in fact, although said petitioner defendant might have so considered the same true;

The Court erred in making the above finding of fact on the ground that it is not pertinent to any issue of fact or question of fact properly raised in a post-conviction proceeding, and this finding of fact is based entirely on evidence which is incompetent in a post-conviction proceeding. To this assignment of error, petitioner's EXCEPTION #57 (R p 30) is directed.

3. The Superior Court committed prejudicial and reversible error in making the following finding of fact:

> that the petitioner defendant was tried at said August Term, 1964, upon a bill of indictment returned by a properly and legally-constituted grand jury, nine of which were selected at the first term of Halifax County Superior Court at the beginning of the spring session of 1964, and nine at the beginning of the fall session of said court by a child under ten years of age from the regular jury panel summoned at each term; that there was one Negro present on the grand jury which returned said bill of indictment a true bill; that there has been no systematic or purposely exclusion of persons of any race in selection of those for jury service by the Board of Commissioners of Halifax County; that said Commissioners have ex-

> cluded from jury service persons white, Negro, Indian and others who in its opinion were infirm in body or mind, had been convicted of felonies, or otherwise incompetent under the applicable provisions of the law of North Carolina;

This finding of fact is erroneous because it is not supported by any competent evidence, and more particularly because the State, as a matter of law, failed to overcome the prima facie case of systematic exclusion of Negroes from service on grand juries because of race, which arose from petitioner's evidence. To this assignment of error, defendant's EXCEPTION #55 (R p 29) is directed.

4. The Superior Court committed prejudicial and reversible error in making the following finding of fact:

> that as the record unquestionably reflects, and the Court so finds as a fact, said petitioner defendant, Charles Lee Parker, freely, voluntarily, without threat, coercion or duress, entered a plea of guilty to the offense of first-degree burglary before His Honor Howard H. Hubbard at the August Term, 1964, of the Superior Court of Hallifax County and was thereupon sentenced as required by law to the North Carolina State Penitentiary for the term of his natural life.

The above finding of fact is upon a question of both fact and law, and as such is not supported by sufficient evidence. To the above assignment of error, petitioner's EXCEPTION #56 (R p 30) is directed.

5. The Superior Court committed prejudicial and reversible error by sustaining the State's objection to the following: Questions to the petitioner:

> MR. SMITH: In coming to this decision, did you consider whether or not the police would be able to introduce this statement you made in evidence against you?
> MR. BURGWYN: Objection.
> COURT: Sustained.

* * * *

MR. SMITH: Did you give any thought to whether or not the police would be permitted to give this statement in evidence at the trial?
MR. BURGWYN: Objection.
COURT: Sustained.

The petitioner's answers to the foregoing questions would have been the same as the following allegation made under oath, contained in paragraph 6 of petitioner's Petition:

> The petitioner formed his decision to plead guilty on the basis of advice by counsel. In arriving at this decision, the petitioner did not consider whether he had been validly indicted and whether he had a right to challenge his indictment. Also, he did not consider that he would be able to prevent the involuntary confession which he had made to the police, from being used against him at the trial, and the threatened use of the involuntary confession was a motivating factor in the petitioner's decision to plead guilty.

The exclusion of this evidence was erroneous, because it was relevant and material to one of the issues raised by the petitioner, that is, his plea of guilty was a product of a coerced confession. To the above assignment of error, petitioner's EXCEPTIONS 1 and 2 (R p 44) are directed.

6. The Trial Court committed prejudicial and reversible error in failing to rule upon several objections made by the petitioner's counsel to questions propounded to witnesses by the Solicitor. To the above assignment of error, the petitioner's EXCEPTIONS 3, 5, 7, 9, 11, 13, 16, 20, 22, 24, 25, 33, and 46 (R pp 45, 46, 50, 51, 52, 58 and 76) are directed.

7. The Superior Court committed prejudicial and reversible error by failing to sustain the petitioner's objections to the following questions propounded to witnesses by the Solicitor:

MR. BURGWYN: And went in the nighttime?
MR. SMITH: Objection.

WITNESS: That's right.

MR. BURGWYN: And you had intercourse with the woman against her will?

MR. SMITH: Objection.

WITNESS: I can't say against her will. She didn't say anything about it.

MR. BURGWYN: You didn't tell her who you were?

MR. SMITH: Objection.

WITNESS: She didn't ask me.

MR. BURGWYN: You didn't turn any light on in the room?

MR. SMITH: Objection.

WITNESS: Didn't need no light.

MR. BURGWYN: She had never invited you there?

MR. SMITH: Objection.

WITNESS: She didn't tell me not to come.

MR. BURGWYN: She didn't know you?

MR. SMITH: Objection.

* * * *

WITNESS: I didn't know her either.

MR. BURGWYN: You went into a woman's home in the middle of the night, who didn't know you, and you didn't know her, had intercourse with her and plead guilty to first-degree burglary?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: Yes, sir.

* * * *

MR. BURGWYN: I ask you if your son didn't tell you in the presence of Mr. Cranford that he had been to this house on this night in question, had intercourse with this woman he didn't know and went in against her will?

MR. SMITH: Objection.

WITNESS: He didn't say against her will. Mr. Cranford asked him if he had ever been there, and he said, "Yes." I said, "It is hard for me to believe

Charles went in there because he don't pay no girls any mind and it is hard to believe that."

* * * *

MR. BURGWYN: That was the same house he had broken in before?

MR. SMITH: Objection.

WITNESS: That was my understanding. I don't recall if that is what he told me.

* * * *

MR. BURGWYN: Was this defendant caught in the act of the crime he was charged with?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: No, sir.

MR. BURGWYN: Was he caught at the house that he had previously broken in or was charged with?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: The same house, yes, sir.

The Court erred in admitting the foregoing testimony into evidence, on the ground that it was irrelevant to the questions and issues raised in the proceeding, since it pertained only to the question of petitioner's guilt or innocence of the crime of which he was convicted, and had no relevance whatever to the constitutionality of the petitioner's trial and sentence. To the above assignment of error, the petitioner's EXCEPTIONS 4, 6, 8, 10, 12, 14, 29, 34, 47, 51 and 52 (R pp 45, 46, 52, 58, 76, 78, 79) are directed.

8. The Superior Court committed prejudicial and reversible error by failing to sustain petitioner's objections to the following questions propounded to witnesses by the Solicitor:

MR. BURGWYN: I ask you, after you were in prison some thirty to sixty days, if you didn't write Mr. Cranford a letter telling him how much you appreciated what he had done for you?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: I don't remember writing Mr. Cranford, either.

* * * *

MR. BURGWYN: I read it to you, and this was written from Central Prison about one week after you were sent to prison:

> Dear Mr. Cranford: I received a letter from my mother and she told me what you said. We plan on following all the rules that they make before me. But anyway I am glad the placed me in prison because I was going to quit school and I know I would have got in some trouble. It's not all bad here. I get a chance to finish school. I suppose to go to Polk Youth Center and I can take a trade. And I am very sorry I caused you all the trouble at the trial. Oh they say be in Raleigh a while I suppose to see a doctor. They think I am crazy. Well I want to thank you for all you did for me.
>
> Charles Lee Parker

You wrote that letter, didn't you?

MR. SMITH: Objection.

WITNESS: I don't recall.

MR. BURGWYN: At the time Mr. Cranford represented you and at the time you wrote this letter, I ask you this one question: were you not at that time completely satisfied with Mr. Cranford's representation of you in Court?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: Other than about thirty days after I got in the penitentiary, I thought he did the best he could.

* * * *

MR. BURGWYN: Did you ever talk to him?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: Yes, sir.

MR. BURGWYN: Where?
MR. SMITH: Objection.
WITNESS: In the penitentiary.
MR. BURGWYN: After he wrote you, or before?
MR. SMITH: Objection.
WITNESS: He came to see me and then wrote me.
MR. BURGWYN: Why did he come to see you?
MR. SMITH: Objection.
WITNESS: I guess to help me. People in Halifax County did me so wrong.
MR. BURGWYN: For what?
MR. SMITH: Objection.
WITNESS: Give me life sentence for what boys in other counties usually get five or six years for.
MR. SMITH: Motion by petitioner to strike.
COURT: Motion denied.

* * * *

MR. BURGWYN: After the case was over and your son was in prison, I ask you if you haven't talked to Sheriff Daniels on one or two occasions, and told him how happy you were that things turned out of this did?
MR. SMITH: Objection.
COURT: Overruled.
WITNESS: No, sir. Charles was sentenced on Tuesday like of this past week and the following Monday I was downtown. I had been to Mr. Cranford's office to pay him what little money I had. I came back and stopped at Star Furniture Company. I was standing there and Mr. Daniels passed me and didn't speak and went on and then came back and talked to me about fifteen minutes. He asked me how Charles was and thought he would get a good education. He said Charles was a good boy and just got with the wrong crowd. He said that he was glad he was getting on all right. I said I hoped he would be all right. He said he could go to to college. I did not say to the Chief of Police that I was dissatisfied with Mr. Cranford. Nobody has asked me whether I

was dissatisfied or pleased with anything that happened in the court. I did not feel that Charles got justice. Nobody asked me. I have not been to anybody and complain.

* * * *

MR. BURGWYN: Did you at a later date receive a letter from Charles Lee Parker in prison?

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: I did.

MR. BURGWYN: Read the letter.

MR. SMITH: Objection.

COURT: Overruled.

WITNESS: This is on prison stationery, and it is as follows:

"Dear Mr. Cranford:

I received a letter from my mother and she told me what you say. What I plan on following all the rules they place before me but in a way I am glad the place me in prison because I was going to quit school and I know I would have got in some trouble. It's not all bad here. I get a chance to finish school. I suppose to go to Polk Youth's Center and I can take a trade and I am very sorry I caused you all the trouble at the trial. Oh they say be in Raleigh a while. I suppose to see a nut doctor. They think I am crazy. Well I want to thank you for all you did for me.

(Signed) Charles Lee Parker"

This letter was dated about two weeks after he was tried. I never saw his father after the trial as I recall. I talked to his mother between the trial and when I got that letter. At that time I suppose I did most of the talking; I told her to encourage Charles to make the best of prison and to try to go to school and I thought he would be out before he was thirty.

MR. BURGWYN: Did she complain to you about your representation or handling of the case?

MR. SMITH: Objection.
COURT: Overruled.
WITNESS: She did not. She thanked me.
MR. BURGWYN: Did she finish paying you your fee?
MR. SMITH: Objection.
COURT: Overruled.
WITNESS: She paid me some more on it but never completed paying it.

* * * *

MR. BURGWYN: The State offers in evidence as State's Exhibit 1 the statement of Viola Parker, as State's Exhibit 2 the statement of Charles Lee Parker, and as State's Exhibit 3 a letter from Charles Lee Parker to Dwight L. Cranford.
COURT: Allowed.

* * * *

MR. BURGWYN: In your conversation with his mother after he plead guilty, did she complain about any treatment?
MR. SMITH: Objection.
COURT: Overruled.
WITNESS: No, sir.
MR. BURGWYN: Did she make any statement to you?
MR. SMITH: Objection.
COURT: Overruled.
WITNESS: Viola has talked to me three times to my knowledge that I would see her on the street about Charles Lee and each time she has told me how well he was getting along in prison and I believe at one time she told me he was going to school regular and was a member of the boxing team and got along real good and if it weren't for the fact that he would have to stay away so long it was the best thing that ever happened to me. I said, "There is a probability, if he behaves himself, he won't have to stay too long." She asked me if I ever went to the camp where he was, to stop and talk to him, and I told her I would.

The Court erred in admitting into evidence the foregoing testimony on the ground that it was irrelevant, since it pertained only to statements made by and thoughts of the petitioner and his mother during the several months subsequent to the petitioner's trial and sentence, and such matter had no bearing on the constitutionality of petitioner's trial and sentence. To the above assignment of error, petitioner's EXCEPTIONS 15, 17, 18, 19, 21, 23, 25, 27, 28, 32, 41, 42, 43, 44, 45, 49 and 50 (R pp 50, 51, 52, 57, 58, 72, 73 and 78) are directed.

9. The Trial Court committed prejudicial and reversible error by failing to sustain petitioner's objection to the following question asked by the Solicitor of a witness:

> MR. BURGWYN: Your father wasn't here at your trial. You were tried for your life and your father didn't have enough interest to come to Court?
> MR. SMITH: Objection.
> COURT: Overruled.
> WITNESS: My mother was here.

It was error to permit the above question to be asked, because it called for incompetent opinion evidence as to another person's state of mind, and because the presence or absence of the petitioner's father from his trial was irrelevant in this proceeding. To the above assignment of error, the petitioner's EXCEPTION #30 (R p 52) is directed.

10. The Superior Court committed prejudicial and reversible error by permitting the Solocitor to ask the following question over the petitioner's objection:

> MR. BURGWYN: Did you father ever attempt to visit his son?
> MR. SMITH: Objection.
> COURT: Overruled.
> WITNESS: My father was working.

This question plainly called for hearsay testimony, and should not have been allowed. To the above assignment of error, the petitioner's EXCEPTION #36 (R p 63) is directed.

11. The Superior Court committed prejudicial and reversible error by sustaining the State's objection to petitioner's examination of the witness Hubert M. Blalock, Jr., as follows:

> MR. SMITH: What are these degrees in?
> MR. BURGWYN: Objection.
> COURT: Mr. Smith, what is the purpose of calling this witness?
> MR. SMITH: The petitioner has called this witness for the purpose of having him qualify as an expert in statistics, and have him testify as to the statistical probabilities of arriving at a racial distribution of grand jurors in Halifax County on a random or other unbiased basis, which is identical to the actual racial distribution of grand jurors during the term of court at which the petitioner was indicted and for all of the grand juries impaneled during the period from January, 1960, to the time of the petitioner's indictment, and also this distribution for all jury lists drawn by the jury commissioners during this period.
> COURT: This kind of testimony is not competent. I will sustain the Solicitor's objection. Testimony of probabilities has no place in a courtroom. When you talk about probabilities, you are talking about gambling. This man is a gambler. He might as well go to Las Vegas and make his living there.

The exclusion of this testimony was erroneous, because it would have been very relevant to the issue in the proceeding of whether, at the time of the petitioner's indictment, members of his race had been systematically excluded from the grand juries of Halifax County. To the above assignment of error, petitioner's EXCEPTION #37 (R pp 67-68) is directed.

12. The Superior Court committed prejudicial and reversible error by refusing to allow the petitioner to have the testimony of the witness Hubert M. Blalock, Jr. made a part of the record for consideration by the Court on petitioner's Petition for a Writ of Certiorari:

MR. SMITH: The petitioner requests leave of the Court to place the testimony of the witness on record, so that it can be preserved for appeal.

COURT: I will deny that request. You may prepare an affidavit of his testimony, and if it is satisfactory to me, I will allow it to be placed in the record.

To the above assignment of error, the petitioner's EXCEPTION #38 (R pp 67-68) is directed.

(TRANSCRIPT CERTIFIED BY CLERK SUPERIOR COURT)

IN THE COURT OF APPEALS
OF NORTH CAROLINA

No. 68SC125

CHARLES LEE PARKER

v.

STATE OF NORTH CAROLINA

ON Writ of Certiorari to review an order of *Parker, Joseph W., J.*, at the 13 November 1967 Special Civil Session of Superior Court of HALIFAX County.

At the August 1964 Session of Halifax Superior Court petitioner, Charles Lee Parker, pleaded guilty to an indictment for first-degree burglary and was sentenced to life imprisonment. The present proceedings were commenced in 1967 by petition filed under the North Carolina Post-Conviction Hearing Act, G.S. 15-217, *et seq.* Petitioner challenges the constitutional validity of the judgment sentencing him to prison on two grounds: (1) that the indictment against him was invalid in that members of his race had been systematically excluded from

the grand jury which returned it against him and he had not waived this jurisdictional defect; and (2) that his plea of guilty was a product of his prior coerced confession. Hearings were held on this petition in the Superior Court of Halifax County on 13 November and 19 December 1967.

Evidence submitted by petitioner and by the State at the post-conviction hearings indicated the following facts: On Thursday night, 16 July 1964, about 11:00 p.m. the petitioner, Charles Lee Parker, a Negro boy then 15 years old, was arrested by the police officers as he walked into a yard and went up to a door of a house in Roanoke Rapids. On the preceding Sunday night at approximately 11:00 p.m. someone had broken into this same house and had raped a female occupant. Following his arrest petitioner was taken to the police station where he was questioned as to whether he had broken into any houses. He refused to tell his name or where he was from. The questioning continued for an hour or two, after which he was placed in an unlighted cell for the remainder of the night. There was a drinking fountain in the cell, but no water in it. Petitioner was not given anything to eat that night. The following morning he was again questioned for about an hour, at which time he signed a confession. During the night the officers in some manner learned his identity and about 4:30 a.m. the officers went to his home and informed his mother that he had been arrested. Early the following morning the mother employed the services of an attorney in Roanoke Rapids to represent her son. On the same morning the attorney went to the police station and there talked with petitioner who told him he had already confessed to the police. The attorney questioned him as to whether, when he made the confession, he had been threatened in any manner, whether any promises were made to him, and whether he was scared at the time he made the statement. He told his attorney that no threats and no promises had been made and that he was not scared. Petitioner was given drinking water the second time he was interrogated and was given two sandwiches after he had confessed. At the trial in Halifax Superior Court which occurred on 17 and 18 August 1964,

the mother was present and the attorney discussed with her and with the petitioner the nature and seriousness of the charge of first-degree burglary against petitioner, and both the mother and the petitioner signed written statements authorizing the entry of a plea of guilty to first-degree burglary. At the time these statements were signed petitioner and his mother realized that by entering such a plea he would be sentenced to life imprisonment. In petitioner's statement he also acknowledged that he had not been threatened or abused in any manner by any person and that no promises had been made to him if he pleaded guilty to any charge. Prior to imposing sentence, the judge presiding at the trial examined the petitioner and his mother and made a finding that the petitioner understood the import of his plea and that it was made freely and voluntarily. Sentence of life imprisonment was thereupon imposed. Petitioner's attorney at no time discussed with him the racial makeup of the grand juries in Halifax County or the possibility of quashing the bill of indictment.

From order denying any relief, petitioner made application for Writ of *Certiorari*, which was granted.

T. W. Bruton, Attorney General and James F. Bullock, Deputy Attorney General, for the State.

Norman B. Smith for the petitioner.

OPINION—Filed August 14, 1968

PARKER, J.

At his post-conviction hearing petitioner introduced evidence tending to show a statistical disparity between the racial composition of the adult population of Halifax County as compared with the racial composition of the grand juries of the county at the time of his indictment and for a substantial period prior thereto. He contends that this evidence made a *prima facie* case that members of his race had been systematically excluded from the grand jury which had indicted him, that the State had introduced no competent evidence to rebut such *prima*

facie case, and that the court's finding of fact to the effect that there had been no systematic exclusion of Negroes from such jury was not supported by competent evidence. In support of his contention petitioner cites: *Arnold* v. *North Carolina*, 376 U.S. 773, 84 S. Ct. 1032, 12 L. ed. 2d 77; *State* v. *Lowry*, 263 N.C. 536, 139 S.E. 2d 870; *State* v. *Wilson*, 262 N.C. 419, 137 S.E. 2d 109.

Under the criminal procedure of this State, however, objection to the grand jury is deemed waived unless raised in apt time by motion to quash the indictment. *State* v. *Rorie*, 258 N.C. 162, 128 S.E. 2d 229. Such a motion may be made as a matter of right up to the time defendant is arraigned and enters his plea. The presiding judge as a matter of grace has discretionary power to permit the accused to make the motion to quash the indictment after his plea is entered and until the petit jury is sworn and impaneled to try the case on the merits. Thereafter the presiding judge has no power at all to entertain a motion to quash the indictment. *Miller* v. *State*, 237 N.C. 29, 74 S.E. 2d 513. If the objection is raised in apt time, by making the motion to quash before entering a plea, a subsequent plea of guilty does not waive the objection. *State* v. *Covington*, 258 N.C. 501, 128 S.E. 2d 827.

In the present case petitioner did not raise the objection prior to entering his plea of guilty. He raised it for the first time in the post-conviction proceedings commenced approximately three years after entry of his plea of guilty and the judgment sentencing him to life imprisonment. Under the established criminal procedure of this State, petitioner's objection comes too late. G.S. 9-26.

It may be granted that petitioner, as many other defendants in criminal cases, was not familiar with the rules of criminal procedure. Nevertheless, such rules are necessary for an orderly administration of justice. It is precisely for the reason that defendants in criminal cases may not be familiar with all of their rights and the means of protecting them that we require they be represented by counsel. Petitioner here was represented by experienced and competent trial counsel employed by his family for that purpose.

> "It is inherent in the judicial process that courts must deal with litigants as though they were acting in the persons of their attorneys. For this reason, the law confers upon the attorney for the defense in a criminal case the power to take such steps in matters of practice and procedure as he deems appropriate to protect the interests of the accused, and decrees that the accused is bound by his action as to those matters. . . . It necessarily follows that the attorney for the defense in a criminal action may waive a constitutional right of his client relating to a matter of practice or procedure. . . . The right of a Negro defendant to object to a grant or petit jury upon the ground of discrimination against members of his race in the selection of such jury is waived by failing to pursue the proper remedy." *Miller* v. *State*, *supra*.

In conformity with the decisions of the Supreme Court of North Carolina, we hold that petitioner, acting through his employed attorney, waived any objection to the grand jury by his failure to move in apt time to quash the indictment. Petitioner cites, *contra*, *McNeill* v. *North Caroline*, 368 F. 2d 313, a decision of the United States Fourth Circuit Court of Appeals.

In his order denying petition relief the superior court judge found as a fact that petitioner had "freely, voluntarily, without threat, coercion or duress entered a plea of guilty to the offense of first-degree burglary" at the August, 1964 Term of Halifax Superior Court. Petitioner excepts to this finding as not being supported by sufficient evidence. In his brief petitioner's counsel argues that "logic compels that the petitioner's guilty plea be considered a product of his involuntary confession, and that therefore it must be determined that the petitioner's guilty plea was coerced and the Court was without jurisdiction to sentence the petitioner." This argument is valid only if the evidence at the post-conviction hearing would as a matter of law compel the finding of two things: first, that absent the confession the guilty plea would not have been entered; and second, that the confession was in fact involuntary. In our opinion, the evidence does not as a matter of law compel such a finding as to either. As to

the first, there may well have been strong evidence to establish defendant's guilt available to the State had the plea of guilty not been entered, and it may have been that petitioner and his trial counsel were aware of such evidence. The record clearly discloses that petitioner, in the presence of his mother freely acknowledged his guilt to his trial attorney. We cannot say as a matter of law that "logic compels" that petitioner's guilty plea was the product of his prior confession to the police. Nor does a careful examination of the entire record, with particular attention being given to petitioner's own testimony, compel the conclusion as a matter of law that petitioner's confession to the police was coerced or otherwise obtained in an unconstitutional manner. There was no prolonged or continuous interrogation by the officers. By his own testimony he was questioned only "an hour or two" on the night of his arrest, at which time he refused to disclose even his name. He was questioned "about an hour" the next morning, when he confessed. He does not contend he was in any way physically abused. He told his attorney, who visited him a few minutes after his confession, that no threats and no promises had been made and that he was not scared.

At the post-conviction hearing petitioner testified that on the night of his arrest he had asked to see his attorney and his mother, but he admits that at that time he refused to tell the officers what his name was, or the name of his mother, or who his lawyer was. At the post-conviction hearing he also testified that on the night of his arrest he was not given anything to eat or drink, but even if true this hardly seems coercive in view of the fact he admitted having had supper that night. At his post-conviction hearing he also testified that prior to his confession the officers had promised to help him as best they could but didn't say what they would do. All of this testimony, that he had asked and been denied the right to see his lawyer, that he had been denied food and water, and that the officers had made promises to him, was first given by petitioner at his post-conviction hearing more than three years after his arrest. And it is inconsistent with what he himself told his lawyer on the morning following

his arrest. The evidence in the record simply does not, at a matter of law, compel a finding that petitioner's confession was involuntary or that in obtaining it the police violated any of his constitutional rights.

Petitioner also contends that his plea of guilty was involuntary because of his fear of receiving a death sentence if he had risked a jury trial by a plea of not guilty. He argues that this was an inherently coercive factor which necessarily deprived him of freedom of choice in making his plea, thereby imposing an impermissible burden upon his exercise of his Fifth and Sixth Amendment rights under the Federal Constitution. *United States* v. *Jackson*, 390 U.S. 570, 88 S. Ct. 1209, 20 L. ed. 2d 138. The North Carolina Supreme Court, however, has had occasion recently to point out the material differences in the Federal Kidnapping Act with which the United States Supreme Court was concerned in *Jackson*, and the North Carolina Statutes relating to the death penalty and to the permissive tender of a plea of guilty. In *State* v. *Peele*, 274 N.C. 106, filed 14 June 1968, the North Carolina Supreme Court pointed out that:

> "G.S. 15-162.1 is for the benefit of a defendant and may be invoked only on his and his counsel's written application. It provides that the State and the defendant, under rigid court supervision, may, without the ordeal of a trial, agree on a result which will vindicate the law and save the defendant's life. As stated in the *Jackson* case, there are 'defendants who would greatly prefer not to contest their guilt.' Practical experience indicates only in extreme cases does the jury fail to recommend life imprisonment rather than the death penalty."

In view of the rigid court supervision which G.S. 15-162.1 requires before a guilty plea may be entered, we hold that the interplay of that statute with statutes such as G.S. 14-52 which impose the death penalty in cases where the defendant is convicted after a plea of not guilty and the jury fails to recommend life imprisonment, does not result in any substantial denial of a defendant's constitutional rights.

Petitioner also assigns as error the court's admission of evidence relative to petitioner's guilt of the crime for which he had been convicted. At the post-conviction hearing the petitioner, on cross-examination by the solicitor and over objection by his counsel, freely admitted that he had entered the house which he was charged with having burglarized and there having intercourse with a female occupant who had not been previously known to him. The purpose of the proceeding under the North Carolina Post-Conviction Hearing Act, G.S. 15-217, *et seq.*, is not to determine petitioner's guilt or innocence. That matter has already been determined in the trial and judgment which is the subject of post-conviction review. The purpose of post-conviction review is to determine whether in the proceedings leading to the conviction there occurred any substantial denial of petitioner's constitutional rights. G.S. 15-217. Therefore, testimony as to petitioner's guilt was not relevant in the post-conviction proceedings. However, its admission in no way prejudiced petitioner's opportunity to develop fully the testimony which was relevant to the constitutional issues raised by him and its admission was at most harmless error.

Petitioner has made other assignments of error relating to admission or exclusion of evidence and to the court's failure to rule on objections to evidence. We have examined these carefully but find no prejudicial error.

The judgment is

Affirmed.

CAMPBELL and BROCK, JJ., concur.

SUPREME COURT OF THE UNITED STATES

No. 995 Misc., October Term, 1968

CHARLES LEE PARKER, PETITIONER

v.

NORTH CAROLINA

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—June 23, 1969

On petition for writ of Certiorari to the Court of Appeals of the State of North Carolina.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket No. 1556, placed on the summary calendar and set for oral argument immediately following No. 1064.

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